

1056
No. 2941

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE QUICKSILVER MINING COMPANY, a
Corporation,

Plaintiff in Error,

vs.

C. P. ANDERSON,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the
United States District Court of the
Northern District of California,
Second Division.

Filed

APR 11 1917

F. D. Monckton,

Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE QUICKSILVER MINING COMPANY, a
Corporation,

Plaintiff in Error,

vs.

C. P. ANDERSON,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the
United States District Court of the
Northern District of California,
Second Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Answer	22
Assignment of Errors.....	275
Bill of Exceptions to be Used by Defendant in Any Writ of Error Hereafter Allowed to the United States Circuit Court of Appeals, for the Ninth Circuit, to Review the Judgment Heretofore Rendered Herein.....	52
Bond	13
Bond on Writ of Error and Supersedeas Bond.	282
Certificate of Clerk U. S. District Court to Transcript of Record.....	288
Citation on Writ of Error.....	293
Clerk's Certificate to Judgment-roll.....	44
Complaint	1
Demurrer	19
DEPOSITIONS ON BEHALF OF DEFEND- ANT:	
BOWE, MARGARET A.	210
Cross-examination	212
Redirect Examination	213
Recross-examination	214
Redirect Examination	214
NONES, CHARLES A.....	150
Cross-examination	161

	Index.	Page
DEPOSITIONS ON BEHALF OF DEFEND-		
ANT—Continued:		
Redirect Examination		187
Recross-examination		199
Redirect Examination		204
Recross-examination		208
SWAYNE, ALFRED H.....		137
Cross-examination		141
Redirect Examination		148
TRACY, CHARLES F.....		149
Cross-examination		150
EXHIBITS:		
Plaintiff's Exhibit 1—Articles of Incorporation of Senonac Power Co.		220
Plaintiff's Exhibit 1—Minutes of Meeting of Stockholders of the Quicksilver Mining Co., February 15, 1913.....		224
Plaintiff's Exhibit 2—Certified Copy of Portion of Schedules in Bankruptcy of C. A. Nones		230
Plaintiff's Exhibit No. 5—Articles of Incorporation of San Jose and Almaden R. R. Co.		222
Plaintiff's Exhibit 6—Letter, March 5, 1912, Nones to Anderson.....		83
Defendant's Exhibit "A"—Excerpts from "S. F. Chronicle," April 2, 1913.....		219
Defendant Exhibit 1—Excerpts from Minute-Book of the Quicksilver Mining Co. from June 15, 1909, to May 15, 1913..		231

EXHIBITS—Continued:

Defendant's Exhibit No. 2—Annual Report of the Quicksilver Mining Co. for the years 1909, 1910, etc.....	256
Defendant's Exhibit No. 3—Excerpts from Printed Annual Report of Quicksilver Mining Company for 1910–1911.....	257
Defendant's Exhibit No. 4—Excerpts from Printed Report of the Operations of the Quicksilver Mining Co. etc.....	258
Defendant's Exhibit No. 5—Excerpts from Printed Report of Operations of Quicksilver Mining Company.....	260
Defendant's Exhibit No. 6—Charter and By-laws of the Quicksilver Mining Co..	260
Findings of Fact and Conclusions of Law.....	37
Judgment	43
Letter, September 6, 1911, Nones to Schuman..	68
Memorandum Opinion	266
Notice of Presentation of Petition and Bond for Removal to Federal Court.....	16
Opinion	45
Opinion	266
Order Allowing Writ of Error and Fixing Amount of Bond.....	281
Order Extending Time to File Record on or Be- fore February 26, 1917.....	296
Order for Removal.....	17
Order Overruling Demurrer.....	21
Order Settling and Allowing Bill of Exceptions	218
Order That Findings be Filed and Judgment Entered	37

Index.

Page

Petition for Removal of the Within Entitled Suit to the District Court of the United States for the Northern District of Califor- nia	10
Petition for Writ of Error.....	273
Return to Writ of Error.....	292
Stipulation Extending Time to File Record on or Before February 26, 1917.....	295
Stipulation That the Foregoing Bill of Excep- tions be Settled and Allowed as Presented.	216
Stipulation Waiving Trial by Jury.....	36
TESTIMONY ON BEHALF OF PLAINTIFF:	
ANDERSON, C. P.....	53
Cross-examination	84
Redirect Examination	100
Recross-examination	101
BRASSY, A. L.....	103
Redirect Examination	104
HERMANN, CHARLES	134
Cross-examination	134
LATHAM, J. F.....	113
Cross-examination	119
Redirect Examination	131
Recross-examination	131
SMITH, EMORY E.....	131
Writ of Error.....	290

*In the Superior Court of the State of California, in
and for the County of Santa Clara.*

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY, a
Corporation,

Defendant.

Complaint.

Plaintiff complains of defendant and for a cause of action as above-entitled alleges:

I.

That at all times herein mentioned defendant was and it now is a corporation duly and regularly organized, acting and existing as such under and by virtue of the laws of the State of New York, and as such corporation did run and operate, during all of said period a quicksilver mine in the County of Santa Clara, State of California, and had and maintained offices in said County and State, by its agent and general superintendent.

II.

That said defendant, through its agent and general superintendent, in the County of Santa Clara, State of California, employed plaintiff to do certain work and labor and to perform certain services in the matter of organizing two certain other corporations, which said corporations are denominated and known

as the San Jose and Almaden Railroad Company and the Senonac Power Company. [1*]

That said employment covered the organization of said corporations by plaintiff, the assistance of plaintiff in carrying on the business of said corporations, the services of plaintiff in securing options for the purchase of property and rights of way for a railroad, and the purchase of property and options for the purchase of property and water rights and rights of way for said power company, and doing and performing of said other matters and things as might from time to time be required by said defendant in connection with the purposes for which said corporations were to be and were organized.

III.

That said defendant accepted said employment; it was understood and agreed by and between said plaintiff and said defendant that the said plaintiff's compensation for said services should be fixed and determined by and between said plaintiff and said defendant at a period of time when the work so to be done by said plaintiff under said employment was substantially completed, and that when so completed, that the said plaintiff and defendant should then arrive at a reasonable value of the services so rendered by plaintiff, and should settle the value of said services in the amount due said plaintiff from said defendant therefor; and that at the time of the settlement of the amount so due said plaintiff for said services, that the amount so then settled upon for all

*Page-number appearing at foot of page of original certified Transcript of Record.

of said services would at the time of the settlement then and there become due and payable from said defendant to said plaintiff; and that all expenditures made or incurred by said plaintiff for and on behalf of said defendant in the performance of said work and services, should at the same time become due and payable from said defendant to said plaintiff. [2]

IV.

That said plaintiff entered upon and undertook said work and services so required of him by said defendant, and organized said two corporations and assisted in carrying on and conducting the business of the same, and procured options upon property and purchased property for said two corporations, and rights of way for said railroad, and said railroad company and water rights for said power company, and did and performed each and everything in relation to or connected with said employment required of him by said defendant.

V.

That said two corporations were organized for the exclusive benefit of said defendant, and said defendant was the owner of all of the stock in each of the said two corporations, whether the same stood in the name of the defendant upon the books of the said two corporations, or in the name of other persons. That all of the stock of said two corporations which stood in the name of persons other than said defendant was nevertheless in truth and in fact held in trust by such other persons in trust for the benefit of said defendant, and was the property of said defendant.

VI.

That at all times herein mentioned, Charles A. Nones was the President, Agent and General Superintendent of said defendant corporation. That the said employment of plaintiff hereinbefore mentioned was made through, and all the matters and things done and performed by said plaintiff for said defendant, were so done and performed under the instructions and directions of said Charles A. Nones, as such president, agent and general superintendent of said defendant corporation.

VII.

That on or about the 5th day of March, A. D. 1912, the work and labor so to be performed by plaintiff, and the services [3] so to be rendered under said employment were substantially completed, rendered and performed. That upon said day said plaintiff applied to the said Charles A. Nones, as such president, agent and general superintendent of said defendant corporation, for the statement of his account and for a determination and settlement of the amount due plaintiff for all of said work, labor and services and for a settlement and statement and determination of the amount due for moneys expended by plaintiff for and on behalf of said defendant in connection with said employment.

That at said time, said Nones, as such president, agent and superintendent of said defendant corporation, stated and represented to plaintiff that said defendant had purchased and had had delivered to it all steel rails, railroad ties and other equipment

necessary for the construction and completion of the railroad contemplated to be by it constructed under the said name San Jose and Almaden Railroad Company, and that the same would be fully constructed within ninety days from the said 5th day of March, A. D. 1912, and that upon the construction of said railroad said plaintiff would be paid for all moneys laid out by him for the benefit of said defendant in connection with said employment, and would be paid for all services rendered by him, and that at said time the amount and reasonable value to be paid to plaintiff for all services other than services connected with said railroad, and said railroad company would be fixed and the amount of the expenditures so made by said plaintiff would be fixed and settled and both said amounts would be paid, together with the amount and reasonable value for all services rendered in connection with said railroad would then be fully paid; and at said time the said Nones, as such president, agent and general superintendent of said defendant corporation, did fix the amount and value of the services rendered by said plaintiff for said defendant in connection with said railroad [4] and said railroad corporation, and did then and there give to plaintiff a statement in writing fixing the value of work and labor performed and services rendered by said plaintiff for said defendant in connection with said railroad and said railroad corporation at the sum of Four Thousand Five Hundred (\$4500) Dollars, and did then and there and thereby specify that said amount should be payable to said plaintiff

upon the completion of said railroad.

That said plaintiff accepted said statement of the amount so due him from defendant for services so rendered by him in connection with said railroad and said railroad corporation, and then and there agreed to await for the payment of said sum and for a settlement and the payment for said services rendered in connection with and relating to the matter of said power company, and the amount of money expended by plaintiff for and on behalf of the defendant in connection with said employment until the completion of said railroad, all because of the representations then and there so made by defendant's said agent.

VIII.

That upon the 5th day of March, A. D. 1912, when defendant's said agent so represented to said plaintiff that said defendant had purchased and had in its possession the rails, ties and other materials and appliances for the construction of said railroad, and that said railroad would be completed within ninety days from said 5th day of March, A. D. 1912, said representations and statements were false, and were then and there known to be false by defendant's said agent, and were then and there made by defendant's said agent to said plaintiff for the purpose and with the intention in him, defendant's said agent, to deceive and misrepresent the truth concerning said matters and things to said plaintiff. That said plaintiff then and there believed said representations and [5] statements and relied upon the truth of the

same, and was deceived thereby. That in truth and in fact said defendant had never purchased any rails or ties or other appliances for the construction of said railroad, all of which was then and there well known to defendant's said agent; that said railroad was never completed within ninety days from said date, but to the contrary the same has never been started, and nothing has been done towards the construction thereof by said defendant, or by any other person, and said defendant's said agent well knew at the time of making said representations that said railroad would not be completed within ninety days from said 5th day of March, A. D. 1912; that he had no basis in fact upon which to found such a declaration or representation.

That because of the matters and things hereinbefore set forth and because of said false and fraudulent misrepresentations so made by defendant's said agent to said plaintiff, said plaintiff did not then and there, to wit: upon said 5th day of March, A. D. 1912, procure from defendant's said agent a full settlement of the accounts existing between plaintiff and defendant, and did not procure from defendant's said agent a stated account and determination of the amount due and payable from defendant to plaintiff for plaintiff's services with said power company, or a stated account or determination of the amount due plaintiff from defendant because of moneys expended by plaintiff for and on behalf of said defendant as aforesaid, but because of said false and fraudulent representations and plaintiff's belief therein and his

reliance upon the truth of the same, said plaintiff consented that the determination and statement of said account be had and made at the time of the completion of said railroad, and that the amount determined upon as due therefor, be paid at the time of the completion of said railroad, and that the amount of \$4500.00 agreed upon as being due for plaintiff's [6] services in connection with said railroad, be paid upon the completion of said railroad, and had it not been for said false and fraudulent representations aforesaid, and had it not been for plaintiff's faith in and reliance upon the truth of said representations, said plaintiff would not then have consented to the acceptance of payment of said amounts, or either of them, at the time of the completion of said railroad, and plaintiff alleges that because of the matters and things hereinbefore set forth that the amounts so due plaintiff for said services, and for moneys expended for and on behalf of defendant became due and payable from said defendant to plaintiff upon the 5th day of March, 1912, and the same ever since have been and are now, and each of said amounts ever since has been and is now due, owing, payable and unpaid from said defendant to said plaintiff.

IX.

That the reasonable value of said work and labor performed and services rendered for and on behalf of said defendant in connection with and relating to said railroad and said railroad corporation is the sum of \$4500.00.

That the reasonable value of the work and labor performed and services rendered in connection with said water rights and said power company is the sum of \$2500.00.

That the amount of money expended by said plaintiff for defendant's use and benefit in connection with said employment is the sum of \$411.00.

That no part of said sums, or either of them, have been paid plaintiff, and the aggregate amount thereof, to wit: Seven Thousand Four Hundred and Eleven (\$7411.00) is now due, owing, payable and unpaid from said defendant to plaintiff, and has been so due ever since said 5th day of March, A. D. 1912.
[7]

WHEREFORE, plaintiff prays judgment against defendant for the sum of Seven Thousand Four Hundred and Eleven (\$7411.00) Dollars, together with interest thereon at the legal rate, from the 5th day of March, A. D. 1912, until the day of Judgment, together with his costs herein.

B. A. HERRINGTON,
Attorney for Plaintiff.

State of California,
County of Santa Clara,—ss.

C. P. Anderson, being first duly sworn, deposes and says: That he is the plaintiff in the above-entitled action; that he has read the above and foregoing complaint and known the contents thereof; that the same is true of his own knowledge except to the matters and things therein stated upon his information and belief, and as to those matters he believes it to be true.

C. P. ANDERSON.

Subscribed and sworn to before me this 21 day of February, A. D. 1914.

[Seal]

J. C. BLACK,

Notary Public in and for the County of Santa Clara,
State of California.

[Endorsed]: Filed Feb. 21, 1914. Henry A. Pfister, Clerk. By Archer Bowden, Deputy. [8]

*In the Superior Court of the State of California, in
and for the County of Santa Clara.*

No. 21400.

Dept. 3.

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY, a
Corporation,

Defendant.

**Petition for Removal of the Within Entitled Suit to
the District Court of the United States for the
Northern District of California.**

To the Honorable the Superior Court of the State of
California, in and for the County of Santa
Clara:

Your petitioner, The Quicksilver Mining Com-
pany, a corporation, respectfully shows:

That this suit is of a civil nature at law, wherein
plaintiff seeks to recover of this petitioner the sum of
Seven thousand, four hundred and eleven dollars
(\$7,411), for work and labor performed, and services

rendered, and for moneys expended by plaintiff for defendant's use and benefit.

That therefor the matter and amount in dispute in the above-entitled suit exceeds the sum or value of three thousand dollars (\$3,000), exclusive of interest and costs.

That the controversy in said suit is, and at the time of the commencement of this suit was between citizens [9] of different States, and that your petitioner, the defendant in the above-entitled suit, was, at the time of the commencement of this suit, and still is, a corporation duly organized existing and doing business under and by virtue of the laws of the State of New York, and was, at the time of the commencement of this suit, and still is, a resident of and a citizen of the State of New York, and a nonresident of the State of California; and that the plaintiff, C. P. Anderson, was, at the time of the commencement of the above-entitled suit, and still is, a resident and citizen of the County of Santa Clara, State of California.

That your petitioner has filed herein and offers herewith a bond, with good and sufficient surety, for its entering in the District Court of the United States, for the Northern District of California, within thirty days from the filing of this petition, a certified copy of the record in this suit, and for paying all costs that may be awarded by said District Court, and if said District Court shall hold that this suit was wrongfully or improperly removed thereto; and also for its appearing and entering special bail in such suit, if special bail was originally requisite therein.

Your petitioner therefore prays this Honorable Court to proceed no further herein, except to make the order of removal required by law and to accept the said bond and cause the record herein to be removed into said District Court of the United States for the Northern District of California; and it will ever pray.

THE QUICKSILVER MINING COMPANY.

By W. H. LANDERS,
General Manager.

H. E. WILCOX,
D. M. BURNETT,
A. H. JARMAN,

Attorneys for Petitioner. [10]

State of California,
City and County of San Francisco,—ss.

A. H. Jarman, being first duly sworn, deposes and says:

That he is one of the attorneys for the above-named defendant, The Quicksilver Mining Company, and has his office in the Merchants National Bank Building, in the City and County of San Francisco, State of California; that he makes this verification for and in behalf of this defendant for the reason that the officers of said corporation, The Quicksilver Mining Company, are at present absent from the City and County of San Francisco, where affiant has his said office.

That affiant has read the foregoing Petition, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which

are therein stated on information or belief, and as to those matters, that he believes it to be true.

A. H. JARMAN.

Subscribed and sworn to before me this 7th day of March, 1914.

[Seal] CHARLES R. HOLTON,
Notary Public, in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Mar. 9, 1914. Henry A. Pfister, Clerk. By Archer Bowden, Deputy. [11]

*In the Superior Court of the State of California, in
and for the County of Santa Clara.*

No. 21400.

Dept. No. 3.

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY,
a Corporation,

Defendant.

Bond.

KNOW ALL MEN BY THESE PRESENTS:
That The Quicksilver Mining Company, a corporation, as principal, and Illinois Surety Company, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, as surety, are held and firmly bound unto C. P. Anderson, in the sum of one thousand dollars (\$1,000) for the payment of which well and truly to be made

unto the said C. P. Anderson, his heirs, executors, administrators and assigns, The Quicksilver Mining Company and the Illinois Surety Company bind themselves, their successors and assigns jointly and firmly by these presents; upon condition nevertheless, that

WHEREAS, the above-named C. P. Anderson has commenced a suit of a civil nature in the Superior Court of the State of California, in and for the County of Santa Clara, against the said Quicksilver Mining Company, a corporation; and

WHEREAS, the said Quicksilver Mining Company, simultaneously with the filing of this bond, intends to file its petition in the said suit in said court for the removal of such suit into the District Court of the United States in the district where such suit is pending, to wit, the District Court of the United States for the Northern District *District* of California, according to the provisions of the Act of Congress in such case made and provided; [12]

Now, therefore, the condition of this obligation is such that if said petitioner the Quicksilver Mining Company, a corporation, shall enter in the District Court of the United States for the Northern District of California, within thirty days from the date of filing said petition, a certified copy of the record in such suit and shall well and truly pay all costs that may be awarded by the said District Court if said District Court shall hold that such suit was wrongfully and unlawfully removed thereto, and *and* shall also appear and enter a special bail in such suit, if special bail was originally requisite therein,

then the above obligation shall be void, but shall otherwise remain in full force and virtue.

In witness whereof, said The Quicksilver Mining Company has caused these presents to be executed, and its corporation name to be hereunto affixed, by its General Manager thereunto duly authorized, and the said Illinois Surety Company has caused these presents to be executed and its corporation name and seal to be hereunto affixed by C. T. Hughes, its attorney in fact, this 7th day of March, 1914.

THE QUICKSILVER MINING COMPANY.

By W. H. LANDERS,
General Manager.

ILLINOIS SURETY COMPANY.

[Seal] By CHARLES T. HUGHES,
Its Attorney in Fact.

State of California,

City and County of San Francisco,—ss.

On this 7th day of March, one thousand nine hundred and fourteen, before me, Charles R. Holton, a notary public in and for the City and County, residing therein, duly commissioned [13] and sworn, personally appeared Charles T. Hughes, known to me to be the person whose name is subscribed to the annexed instrument as the attorney in fact of the Illinois Surety Company, and acknowledged to me that he subscribed the name of the Illinois Surety Company thereto as principal and his own name as attorney in fact.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City

and County of San Francisco, the day last above written.

[Seal] CHARLES R. HOLTON,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Mar. 9, 1914. Henry A. Pfister,
Clerk. By Archer Bowden, Deputy. [14]

*In the Superior Court of the State of California, in
and for the County of Santa Clara.*

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY,
a Corporation,

Defendant.

**Notice of Presentation of Petition and Bond for
Removal to Federal Court.**

To the Above-named Plaintiff, C. P. Anderson, and
to B. A. Herrington, His Attorney:

You and each of you will please take notice that on Monday the 9th day of March, A. D. 1914, at the hour of two o'clock P. M., of this day the above-named defendant will file in the above-named Court, in Department No. 3 thereof, its petition and bond as required by law for the removal of said cause from the above-entitled court to the District Court of the United States, for the Northern District of California, and also a bond in the sum of one thousand dollars (\$1,000.00), given on such removal according to law and the requirements of the

statutes in such cases made and provided, and copies of said bond and said petition are herewith served, and upon the filing of said petition and bond the defendant will present and call to the attention of said Superior Court the said petition and bond and move the said Superior Court for an order of removal of said action from said Superior Court to said District Court of the United States for the Northern District of California, and the said motion for removal upon the grounds as stated in said petition and upon said petition and bond so filed and presented.

H. E. WILCOX,
D. M. BURNETT,
A. H. JARMAN,

Attorneys for said Defendants.

[Endorsed]: Filed Mar. 9, 1914. Henry A. Pfister, Clerk. By Archer Bowden, Deputy. [15]

*In the Superior Court of the State of California, in
and for the County of Santa Clara.*

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY,
a Corporation,

Defendant.

Order for Removal.

Upon reading and filing the petition and bond of the defendant The Quicksilver Mining Company, a corporation, for removal of the above-entitled action to the District Court of the United States for the

Northern District of California, and it appearing to the Court that written notice of said petition and bond for removal was given by defendant to plaintiff prior to filing said petition and bond, and this matter duly coming on for hearing, said bond is hereby approved and accepted as good and sufficient, and it is hereby ORDERED that said cause be and the same is hereby removed to the District Court of the United States for the Northern District of California.

Dated this 9th day of March, A. D. 1914.

J. R. WELCH,
Judge.

[Endorsed]: Filed Mar. 9, 1914. Henry A. Pfister, Clerk. By Archer Bowden, Deputy. [16]

State of California,
County of Santa Clara,—ss.

I, Henry A. Pfister, County Clerk of the County of Santa Clara, State of California, and Clerk of the Superior Court in and for said County, do hereby certify the annexed to be a true, full and correct copies of the Original Complaint, Petition for Removal, Bond, Notice of Filing of Petition and Bond, and Order for Removal in action of C. P. Anderson vs. The Quicksilver Mining Company (No. 21,400); and that the same constitute the record therein, and are now of record and on file in said Court.

In Witness Whereof, I have hereunto set my hand

and affixed the seal of the said Superior Court, this 6th day of April, A. D. 1914.

[Seal]

HENRY A. PFISTER,
County Clerk.
By Archer Bowden,
Deputy Clerk.

[Endorsed]: No. 15,752. U. S. District Court, Northern District of California, 2d Division. C. P. Anderson, Plaintiff, vs. The Quicksilver Mining Co., a Corporation, defendant. Record on Removal. Filed Apr. 8, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [17]

*In the District Court of the United States, for the
Northern District of California, Second Division.*

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY,
a Corporation,

Defendant.

Demurrer.

Comes now the above-named defendant, The Quicksilver Mining Company, a corporation, and demurs to the complaint on file herein, and for grounds of demurrer, specifies:

I.

That several causes of action have not been separately stated, to wit, an action upon an account stated to recover the sum of forty-five hundred dol-

lars (\$4,500), an action to recover the reasonable value of the work and labor performed and services rendered, in connection with, and relating to, said water rights and said Power Company, in the sum of twenty-five hundred dollars (\$2,500), and an action to recover money expended by plaintiff for defendant's use in the sum of four hundred and eleven dollars (\$411).

II.

That said complaint does not state facts sufficient to constitute a cause of action. [18]

III.

Defendant specially demurs to said complaint in that it does not appear that said Charles A. Nones, as president, agent, and general superintendent, had the right and power for and in behalf of said defendant corporation, to engage or employ plaintiff to perform the services, or make the expenditures claimed as set forth in said complaint.

WHEREFORE said defendant prays that said plaintiff take nothing by his said action, and that it be hence dismissed with its costs herein expended.

Dated: May 8th, 1914.

A. H. JARMAN,

Attorney for Defendant, The Quicksilver Mining Company.

The undersigned, counsel for the defendant in the above-entitled cause, does hereby certify that the foregoing demurrer is not filed for delay, and that

in the opinion of said counsel the same is well taken in point of law.

A. H. JARMAN,
Attorney for Defendant, The Quicksilver Mining
Company.

[Endorsed]: Filed May 8, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [19]

At a stated term, to wit, the July term, A. D. 1914,
of the District Court of the United States of
America, in and for the Northern District of
California, Second Division, held at the court-
room in the City and County of San Francisco,
on Monday, the 13th day of July, in the year of
our Lord one thousand nine hundred and four-
teen. Present: The Honorable WILLIAM C.
VAN FLEET, District Judge.

The Honorable WILLIAM C. VAN FLEET,
District Judge.

No. 15,752.

C. P. ANDERSON

vs.

THE QUICKSILVER MINING COMPANY.

Order Overruling Demurrer.

Defendant's demurrer having been called on three
consecutive law calendars without answer, it is
ordered that said demurrer be and the same is here-
by overruled for want of prosecution. [20]

*In the District Court of the United States for the
Northern District of California, Second Division.*

No. 15,752.

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY,
a Corporation,

Defendant.

Answer.

Comes now the above-named defendant, The Quicksilver Mining Company, a corporation, and answering plaintiff's complaint, avers, admits and denies as follows:

I.

Admits that at all times mentioned in the complaint that the defendant was and is a corporation created and existing under and by virtue of an Act of the Legislature of the State of New York; admits that said defendant did run and operate, and that it does now run and operate a quicksilver mine at New Almaden, in the County of Santa Clara, State of California, and that it there maintained, and does now maintain its principal office and place of business in this State.

II.

Denies that through its agent and general superintendent, or agent or general superintendent, that this [21] defendant employed plaintiff to do cer-

tain work and labor, or work or labor, and to perform certain services, or perform certain services in the matter of organizing two certain other corporations or any corporation denominated and known, or denominated or known as San Jose and Almaden Railroad Company or Senonac Power Company, or denominated or known by any other name.

This defendant has no information or belief sufficient to enable it to answer the allegations of that part of Paragraph II of plaintiff's complaint, lines 1 to 10, inclusive, page 2 thereof, and basing its denial thereon, denies that said alleged employment of plaintiff covered the organization of said corporations by plaintiff, or the organization of any corporations by plaintiff or any other person, or covered the assistance of plaintiff in carrying on the business of said corporations, or either of them, or covered the services of plaintiff in securing options for the purchase of property and rights of way, or property or rights of way, for a railroad or for any other purpose, or the purchase of property and options, or property or options for the purchase of property and water rights and rights of way, or property, or water rights, or rights of way, for said power company; denies that the said alleged employment of plaintiff covered the doing and performing, or doing or performing of said other matters and things, or other matters or things, as might, from time to time, be required by defendant in connection with the purposes for which said alleged corporations were to be, and were, organized. [22]

III.

Denies that defendant accepted said employment; denies that defendant ever employed plaintiff to perform said alleged services set forth in plaintiff's complaint, or any other service, at any time or at all; denies that it was understood and agreed, or understood or agreed, by and between plaintiff and defendant, that plaintiff's compensation for said alleged services should be fixed and determined, or fixed or determined, by and between plaintiff and defendant at a period of time when the alleged work to be done by said plaintiff under said alleged employment, was substantially completed; denies that when said alleged employment was substantially completed, that plaintiff and defendant should then arrive at a reasonable value, or any value, for the said alleged services so rendered by plaintiff; denies that plaintiff and defendant should then settle the value of said alleged services in the amount due plaintiff from defendant therefor; denies that at the time of said alleged settlement of the amount so due plaintiff for said alleged services, that the amount then settled or agreed upon for said alleged services would, at the time of such settlement, then and there become due and payable, or due or payable, from defendant to plaintiff; denies that all expenditures made or incurred; or made and incurred by plaintiff for and on behalf, or for or on behalf of defendant, in the performance of said work and services, or work or services, or any other work or services, should, at the same time,

become due and payable, or due or payable from said defendant to plaintiff. [23]

IV.

Denies that said plaintiff entered upon and undertook, or entered upon or undertook, said work and services, or work or services, so required of him by defendant; denies that plaintiff organized said two corporations, or any other corporations, at the instance and request, or instance or request of defendant; denies that plaintiff assisted in carrying on and conducting, or assisted in carrying on or conducting the business of said corporations, or either of them, or any business of this defendant.

Defendant has no information or belief sufficient to enable it to answer the allegations in Paragraph IV of plaintiff's complaint, to wit:

“and procured options upon property and purchased property for said two corporations, and rights of way for said railroad and said railroad company, and water rights for said power company,”

and placing its denial upon that ground, this defendant denies said allegations, and each and all thereof; denies that said plaintiff did and performed, or did or performed, each and every thing, or each or every thing in relation to or connected with, or in relation to and connected with said alleged employment required of him by defendant, and in this behalf, defendant avers the fact to be that it never at any time employed plaintiff to perform any services for it, either in connection with said alleged San Jose and

Almaden Railroad Company or said Senonac Power Company, or any other corporation, and further avers that it never authorized any employee, agent or any officer of this defendant to employ said plaintiff for any purpose [24] whatever, and in this behalf defendant avers that no agent, employee or officer of this corporation was ever authorized, or ever had any authority or power to make any contract of employment with plaintiff for his services in connection with said railroad company or said power company, or either of them, or any other corporation, other than for services to be rendered by plaintiff or any other person to this defendant for purposes of its business as authorized by its charter granted by the Legislature of the State of New York, and by and under which it is created and exists as a corporation.

V.

Denies that said two corporations, or either of them, were organized for the exclusive benefit of this defendant; denies that this defendant was the owner of all of the stock in each of said two corporations, or either of them; denies that all of the stock of said two corporations, or either of them, standing in the name of persons other than the name of this defendant, was, in truth and in fact, or in truth or in fact, held in trust by such other persons for the use and benefit, or use or benefit of this defendant; denies that such stock was the property of this defendant.

VI.

Admits that at all the times mentioned in plain-

tiff's complaint, Charles A. Nones was the President of the Board of Directors of this defendant; denies that said Charles A. Nones was the agent and general superintendent [25] of defendant; denies that the employment of plaintiff, mentioned in the complaint herein, was made through, and all the matters and things done and performed, or all the matters or things done or performed by plaintiff for defendant were so done and performed, or done or performed, under the instructions and directions, or instructions or directions of said Charles A. Nones as such president, agent and general superintendent, or president, or agent, or general superintendent of this defendant.

VII.

Defendant avers that it has no information or belief sufficient to enable it to answer the allegations of Paragraph VII of plaintiff's complaint, and placing its denial upon that ground, denies each and every allegation thereof, as though the same, and each of them, were specifically denied, except that this defendant denies that said Charles A. Nones, at any time mentioned in the complaint, was the agent and superintendent, or agent or superintendent of this defendant, other than the fact that said Nones was the president of the Board of Directors of this defendant, and nothing more, and in this behalf defendant avers that said Nones had no authority as such president to employ plaintiff, in behalf of this defendant, to perform any service whatever in connection with said railroad company, the said

power company, or any other company, other than for services to be performed by plaintiff in connection with the business for which this defendant was created, to wit, the mining and marketing of quicksilver, in which business this defendant has engaged continuously [26] since its charter was granted to it by the Legislature of the State of New York in the year 1866.

VIII.

Defendant has no information or belief sufficient to enable it to answer the allegations contained in Paragraph VIII of the complaint herein, and placing its denial upon that ground, denies generally each and every allegation therein contained, as fully as though the same, and each thereof, were specifically denied, except that said defendant denies that said Nones was the agent of this defendant, and in this behalf defendant avers the facts to be, that said Nones was the president of the Board of Directors of this defendant, and had no authority to represent this defendant in any matter other than such as was conferred upon him by virtue of his office as president of the Board of Directors; denies that the amounts alleged in the complaint herein to be due plaintiff for said services, and for moneys expended for and on behalf of defendant, or for services or for moneys expended for or on behalf of defendant, because due and payable, or became due or payable, from defendant to plaintiff upon the 5th day of March, 1912, or at any other time or at all; denies that same ever since have been and are now,

and each of said amounts, or any or all of said amounts, have been and are now due, owing, payable and unpaid, or due, or owing, or payable, or unpaid from defendant to plaintiff.

IX.

Denies that the reasonable value of said work and [27] labor performed and services rendered for and on behalf of defendant, or work or labor performed or services rendered for or on behalf of defendant, in connection with and relating to, or in connection with or relating to said railroad and said railroad corporation, or said railroad, or said railroad corporation, is the sum of four thousand five hundred dollars (\$4,500), or any other sum or at all.

Denies that the reasonable value of the work and labor performed and services rendered in connection with and relating to said water rights and said power company, or said work or said labor performed or services rendered in connection with and relating to, or in connection with, or relating to said water rights or said power company, is the sum of two thousand five hundred dollars (\$2,500), or any other amount or at all.

Denies that the amount of money expended by plaintiff for defendant's use and benefit, or defendant's use or benefit, in connection with said alleged employment, is the sum of four hundred and eleven dollars (\$411), or any other sum or at all.

Admits that no parts of said sums, or either of them, have been paid to plaintiff by this defendant; denies that the sum of seven thousand four hundred

and eleven dollars (\$7,411) is now due, owing, payable and unpaid, or is now due, or is now owing, or is now payable, or is now unpaid from defendant to plaintiff; denies that said sum, or any other sum, has been so due to plaintiff from defendant since the 5th day of March, A. D. 1912, or at any other time or at all. [28]

AND FOR A SECOND AND SEPARATE DEFENSE, defendant avers:

I.

That since April 10, 1866, defendant has been, and now is, a corporation, by name "The Quicksilver Mining Company," created and existing under and by virtue of an Act of the Legislature of the State of New York, which Act has not been modified or repealed, and is now in full force and effect, in words and figures following, to wit:

CHAP. 470.

AN ACT to Incorporate the Quicksilver Mining Company.

Became a law April 10, 1866, with the approval of the Governor. Passed, a majority being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Samuel G. Arnold, William Bond, John A. Collier, Edwin Hoyt, Edwin J. Nightingale, Samuel L. M. Barlow, George J. Forrest, John Elliot, and their associates, be, and they hereby are, created a body politic, by the name, style and title of "The Quicksilver Mining Company" and by such name

and title shall have perpetual succession, and shall be capable of suing and being sued, impleading and being impleaded, and of granting and receiving, in its corporate name, property, real, personal and mixed, and of holding and improving lands in California or elsewhere, and to obtain therefrom any and all minerals and other valuable substances, whether by working or mining, leasing or disposing of privileges to work or mine such lands, or any part thereof, and to erect houses and such other buildings and works as may properly appertain to said business, and to use, let, lease or work the same, and to dispose of the products of all such lands, mines and works as they may deem proper. [29]

2. The said company shall have power to make such by-laws as they may deem proper to enable them to carry out the objects of the corporation, and the same to alter, amend, add to, or repeal at their pleasure, provided that such by-laws shall not be contrary to the constitution of this State, or the provisions of this act, and to adopt a common seal, and the same to alter at pleasure, and to issue certificates of stock, representing the value of their property in such form and subject to such regulations as they may from time to time, by their by-laws, prescribe, and to regulate and prescribe in what manner and form their contracts and obligations shall be executed.

3. The corporators named in this act shall elect persons to serve as directors, a majority of whom shall constitute a quorum for the transaction of busi-

ness, and shall hold their offices until their successors shall have been elected in accordance with the by-laws.

4. It shall be lawful for said company to establish the necessary offices for the business of the company wherein their business is located, and to have their principal office in the United States, in such place as they may deem expedient, at which place it shall be lawful to hold all meetings for the transaction of the business of the company.

II.

That this defendant was not, and has never been authorized by law, to take and hold, or to take or hold, real or personal property, or to make contracts in connection therewith, except such as were and are needed and necessary for its business of mining, and in this behalf, defendant avers that since its creation, as aforesaid, this defendant has never engaged in any business other than that of mining and the operation of reduction works on its mining properties, located at New Almaden, in the County of Santa Clara, State of California, generally known and designated throughout the world as "The New Almaden Quicksilver Mines," [30] which operations resulted in the production of quicksilver, which commodity was and is sold by this defendant.

III.

That said alleged contracts of employment set forth in plaintiff's complaint, and plaintiff's alleged services thereunder were and are for purposes without the power of this defendant to legally execute or authorize, to wit:

Alleged services by plaintiff in organizing two certain other corporations under the laws of the State of California, for the alleged exclusive benefit of this defendant, denominated and known as (1) San Jose and Almaden Railroad Company, and (2) Senonac Power Company, for services assisting in carrying on the business of said corporations, securing options for the purchase of property, and rights of way, and the purchase of property for a proposed railroad between the city of San Jose, County of Santa Clara, State of California, and New Almaden, in said county, all for and in behalf of said railroad company, for services in the purchase of property and options for the purchase of property and water rights and rights of way for said power company, and the doing and performing of such other matters and things as might be required in connection with the purposes for which said railroad company and said power company were to be, and for which they were apparently organized.

IV.

Defendant avers that the organization of said railroad company and said power company, and the alleged employment of plaintiff in connection therewith, were not authorized [31] by its Board of Directors, or by its stockholders, and that same have not been ratified or confirmed by said Board of Directors, or by said stockholders; that said C. A. Nones was not authorized by said Board of Directors or by the stockholders of this defendant, to organize said railroad company and said power com-

pany, or to employ plaintiff to perform any services in connection therewith; that the alleged action of the said C. A. Nones in employing plaintiff to perform services in behalf of this defendant in connection with said railroad company and said power company have not been ratified or approved by the Board of Directors of this defendant, or by its stockholders, and in this behalf defendant avers that it is informed and believes, and therefore alleges, that the organization of said railroad company and said power company were private projects, attempted and fostered by said C. A. Nones and plaintiff for their joint benefit, in order to create a "boom" in the real estate market for the lands along the line of said proposed railroad between said City of San Jose and New Almaden, that the said C. A. Nones and plaintiff might make a profit by dealing in real estate during said anticipated real estate boom, and that said Nones and plaintiff, without right or authority, and in order to further their private interests, represented and made it appear that their acts in connection therewith had been duly authorized by the stockholders of this defendant.

That said railroad company and said power company were and are wholly unnecessary and useless to defendant in its business of mining, and are not in any way connected with said business or incidental thereto, and defendant avers that [32] it has never received or accepted any benefits or other thing of profit by reason of the organization of said corporations and plaintiff's alleged services in connection

therewith as set forth in his complaint herein.

WHEREFORE, this defendant prays judgment that it be hence dismissed with its costs.

A. H. JARMAN,
Attorney for Defendant. [33]

State of California,
City and County of San Francisco,—ss.

A. H. Jarman, being first duly sworn, deposes and says: That he is the attorney for the above-named defendant, The Quicksilver Mining Company; that he has read the above and foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters, that he believes it to be true.

Affiant further avers that he has his office in the City and County of San Francisco, State of California; that said defendant and all the officers of said defendant are presently absent from the said City and County of San Francisco, where affiant has his said office, and for that reason affiant makes this verification for and on behalf of said defendant.

A. H. JARMAN.

Subscribed and sworn to before me this 24th day of November, 1914.

[Seal] CHARLES R. HOLTON,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Nov. 25, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [34]

*In the District Court of the United States, Northern
District of California.*

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY, a
Corporation,

Defendant.

Stipulation Waiving Trial by Jury.

IT IS HEREBY STIPULATED that the above-entitled cause may be tried without a jury, and a jury is hereby expressly waived by the parties hereto.

Dated this 26th day of February, A. D. 1915.

B. A. HERRINGTON,
Attorney for Plaintiff.

A. H. JARMAN,
Attorney for Defendant.

[Endorsed]: Filed March 1, 1915. Walter B. Maling, Clerk. [35]

At a stated term, to wit, the July term, A. D. 1916, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Saturday, the 14th day of October, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable BEN-

JAMIN F. BLEDSOE, District Judge, for the Southern District of California, designated to hold and holding this Court.

No. 15,752.

C. P. ANDERSON

vs.

THE QUICKSILVER MINING CO.

Order That Findings be Filed and Judgment Entered.

Ordered that the findings of fact and conclusions of law herein be filed and that the judgment as signed by the Judge be filed and entered. [36]

In the District Court of the United States, for the Northern District of California, Second Division.

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY, a Corporation,

Defendant.

Findings of Fact and Conclusions of Law.

The above-entitled cause came on regularly for trial before the Court sitting without a jury, a jury in said matter having been expressly waived by the parties. B. A. Herrington, Esq., appeared as counsel for plaintiff, and A. H. Jarman, Esq., appeared as counsel for defendant. Oral and documentary evidence was offered and received in evidence, and the

said matter having been fully and finally submitted to the Court for its determination, the Court now finds the following facts:

First. That at all times herein mentioned, defendant was and it now is a corporation duly and regularly organized, acting and existing as such under and by virtue of the laws of the State of New York; and, as such corporation, did run and operate, during all of said period, a quicksilver mine in the county of Santa Clara, State of California; and had and maintained offices in said county and State, and was represented in said county and State by its agent and superintendent.

Second. That said defendant, through its agent, general superintendent and president, in the county of Santa Clara, State of California, employed plaintiff to do certain work and labor and to perform certain services in the matter of organizing two certain other corporations; which said corporations were denominated and known as the "San Jose and Almaden Railroad Company" [37] and the "Senonac Power Company."

That said employment covered the organization of said corporations by the plaintiff, the assistance of plaintiff in carrying on the business of said corporations, the services of plaintiff in securing options for the purchase of property and rights of way for said railroad, and the purchase of property and the securing of options for the purchase of property and water rights and rights of way for said water-power company, and the doing and performing of such other matters and things as might from time to

time be required of plaintiff by said defendant in connection with the purposes for which said corporations were to be and were organized.

Third. That said defendant accepted said employment. That at the time of accepting said employment, it was understood and agreed by and between plaintiff and defendant, that plaintiff's compensation for said services should be fixed and determined by and between plaintiff and defendant at a period of time when the work so to be done by plaintiff under said employment was substantially completed; and that when so completed, that the plaintiff and defendant should then arrive at a reasonable value of the services so rendered by plaintiff, and should settle the value of said services in the amount due plaintiff from defendant therefor; and that at the time of the settlement of the amount so due plaintiff for said services, then the amount so settled upon for all services would, at the time of the settlement, then and there become due and payable from defendant to plaintiff; and that all expenditures made or incurred by plaintiff for and on behalf of said defendant in the performance of said work and services, should at the same time become due and payable from defendant to plaintiff.

Fourth. That plaintiff entered upon and undertook said work and [38] services so required of him by defendant, and organized said two corporations and assisted in carrying on and conducting the business of the same, and procured options upon property and purchased property for said two corporations and rights of way for said railroad and rail-

road company and water rights for said power company, and did and performed each and every thing in relation to or connected with said employment required of him by defendant.

Fifth. That said two corporations were organized for the exclusive benefit of defendant, and defendant was the owner of all the stock in each of the said two corporations, whether the same stood in the name of the defendant upon the books of the said two corporations, or in the name of other persons. That all of the stock of said two corporations which stood in the name of persons other than defendant was nevertheless in truth and in fact held in trust by such other persons for the use and benefit of defendant, and was the property of defendant.

Sixth. That at all times herein mentioned, Charles A. Nones was the president, agent and general superintendent of said defendant corporation. That the said employment of plaintiff hereinbefore mentioned, was made through, and all the matter and things done and performed by said plaintiff for said defendant, were so done and performed under the instructions and directions of said Charles A. Nones, as such president, agent and general superintendent of said defendant corporation.

Seventh. That the reasonable value of said work and labor performed and services rendered for and on behalf of said defendant in connection with and relating to said railroad and said railroad corporation is the sum of \$4500.

That the reasonable value of the work and labor performed and services rendered in connection with

and relating to said water rights and said power company is the sum of \$2500. [39]

That the amount of money expended by said plaintiff for defendant's use and benefit in connection with said employment is the sum of \$411.

That no part of said sums, or either of them, have been paid plaintiff, and the aggregate amount thereof, to wit, seven thousand four hundred and eleven (\$7,411) is now due, owing, payable and unpaid from said defendant to plaintiff, and the same became due and owing and payable, and has been so due, owing and payable since said 5th day of March, A. D. 1912.

Eighth. And the Court further finds that the employment of said plaintiff as set forth and alleged in plaintiff's complaint was the employment by defendant; and that the said work and labor performed and services rendered were so performed and rendered by said plaintiff under said defendant's employment of said plaintiff; and that the said expenditures of money by said plaintiff were so made for the use and benefit of said defendant, and under defendant's employment of said plaintiff, and that said defendant is obligated to compensate said plaintiff in the amount of the reasonable value of the said work and services and in the amount of said expenditures so made by plaintiff for the use and benefit of said defendant; and that upon the 5th day of March, A. D. 1912, there became due, owing and payable from defendant to plaintiff the said sum of \$7,411, no part of which has ever been paid, and that the same is so now due, owing, payable and unpaid together

with interest thereon at the rate of seven per cent per annum from the 5th day of March, A. D. 1912.

AS CONCLUSIONS OF LAW the Court finds:

That upon the 5th day of March, A. D. 1912, there became due, owing and payable from defendant to said plaintiff the sum of seven thousand four hundred and eleven (\$7,411) dollars; that no part of said sum has ever been paid to plaintiff, and [40] that the whole thereof is still due and owing from defendant to plaintiff.

That plaintiff is entitled to Judgment from defendant for said sum together with interest thereon at the rate of seven per cent per annum from said 5th day of March, A. D. 1912, together with costs of suit.

Let Judgment be entered accordingly.

Dated: October 14, A. D. 1916.

BENJAMIN F. BLEDSOE,

Judge.

[Endorsed]: Filed October 14, 1916. Walter B. Maling, Clerk. [41]

In the District Court of the United States, for the Northern District of California, Second Division.

No. 15,752.

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY, a Corporation,

Defendant.

Judgment.

The above-entitled cause came on regularly for trial before the Court sitting without a jury, a jury in said matter having been expressly waived by the parties. B. A. Herrington, Esq., appeared as counsel for plaintiff, and A. H. Jarman, Esq., appeared as counsel for defendant. Oral and documentary evidence was offered and received in evidence, and the said matter having been fully and finally submitted to the Court for its determination, and the Court having given, made and entered its Findings of Fact and Conclusions of Law, now, upon motion of B. A. Herrington, Esq., attorney for plaintiff, it is hereby Ordered, Adjudged and Decreed, and the Court does here now Order, Adjudge and Decree that said plaintiff have and recover of and from defendant the sum of seven thousand four hundred and eleven (\$7,411) dollars together with interest thereon at the rate of seven per cent per annum from the 5th day of March, A. D. 1912, until the date of the payment of said judgment, together with costs of suit taxed at \$155.20.

Dated: October 14, 1916.

BENJAMIN F. BLEDSOE,

Judge.

[Endorsed]: Filed and entered October 14, 1916.
Walter B. Maling, Clerk. [42]

*In the Southern Division of the District Court of the
United States for the Northern District of Cali-
fornia, Second Division.*

No. 15,752.

C. P. ANDERSON

vs.

THE QUICKSILVER MINING COMPANY, a
Corporation.

Clerk's Certificate to Judgment-roll.

I, W. B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the Judgment-roll in the above-entitled action.

Attest my hand and the seal of said District Court,
this 14th day of October, 1916.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

[Endorsed]: Filed October 14, 1916. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[43]

*In the District Court of the United States, for the
Northern District of California, Second Division.*

No. 15,752.

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY,

Defendant.

Opinion.

BLEDSON, District Judge:

Insistent pressure of other matters awaiting my determination precludes anything but a brief resume of my conclusions in this case, although I have gone over the evidence submitted and the helpful briefs of able counsel with the care and consideration which the importance of the controversy seems to require.

Under the admissions of defendant's counsel made in court during the progress of the hearing, the only question in the case is as to the liability of the defendant upon the claim for compensation advanced by plaintiff. No evidence was tendered upon the issue as to the value of the services rendered, and counsel for defendant very properly indicated that the only question to be tried was the one of the authority of defendant's president to employ plaintiff and defendant's obligation to compensate him for the services rendered in response to such employment.

Very briefly, the controlling facts as they appeal to me are that, the defendant at the time of the trans-

actions in controversy was, and for more than forty years had been, conducting the operation of its quicksilver mines in Santa Clara County, by means, presumably, of agents and general managers, sent out from, and reporting to, the head office, which was always maintained in the city of New York. During that period, and in fact during all of the time under which plaintiff alleges he was [44] being employed by defendant's president, many thousands of dollars annually were being expended in the prosecution of the business of the corporation, including the mining of quicksilver, the carrying on of a general store, the selling of parcels of its immense property, and the doing of all things which seemed to be necessary or incidental to the consummation of the work in hand. The head offices of the company were in New York, more than three thousand miles away from this the only property which the company owned. At that property, and apparently having general charge of all its activities, was the president of the corporation, Nones, who seemed to be the chief directive head and force of the corporation, and who was assisted and aided at all times, apparently, by Tatham, the treasurer and general manager of the company, and likewise a director along with President Nones, who acted at all times under the direction of, but in sympathy with, the president and apparently supreme directive head.

There is no doubt but that plaintiff was employed by Nones, the apparent supreme directive head of the destinies of the corporation, to perform certain services for and in behalf of the corporation; neither is

there any doubt but that such employment was had with the knowledge, acquiescence and active participation in all things attending it of Tatham, Nones, treasurer, general manager and codirector. It may be, and probably is, true, although the proof is not entirely clear upon that point, that, the employment of the plaintiff for the purposes indicated by Nones, and for which compensation is sought in this proceeding, was without direct and precise authority emanating from the Board of Directors, and perhaps without knowledge upon their part as to such employment or its consequences. Be that as it may, however, plaintiff as a reasonable man, using reasonable diligence and discretion in the consideration of matters required by him to be [45] determined, was in no wise apprised of this fact, if it be the fact. Under all the circumstances, considering the general course of the business of the corporation, considering the long distance from the head office to where the property was situated, considering the fact that two directors of the corporation were upon the ground, and that they were actively co-operating in the doing of all things which served to render the defendant liable to plaintiff as for compensation for services rendered, and considering the fact that these two men, Nones and Tatham, either together or singly, were apparently clothed by the corporation, more than three thousand miles away, with the control of the destinies and activities of the property belonging to the corporation, there is small wonder, to my mind, that upon plaintiff being approached by Nones to secure certain options upon land having to do with water

rights situate upon defendant's property, and to secure certain other rights of way between the mining property and the nearest large community whereon a railway might be constructed whereby the property of the defendant would be directly benefited and whereby the products of its mining operations might be much more economically conveyed to market, plaintiff should have considered and been justified in considering that ample authority for his employment was lodged in the directive head then upon the ground. As was said by the Supreme Court of Nebraska in *Johnson vs. Milwaukee etc. Investment Company*, 64 N. W. 1100: "In this case the corporation was located in Milwaukee in the State of Wisconsin. It was formed for the purpose of doing business in Wyoming and most of its business was there conducted. The very fact that the corporation and its general officers held their office at a remote point was an element for consideration. *Rathbun vs. Snow*, 123 N. Y. 343. One might be justified in dealing with a person in apparent [46] management of the business in Wyoming, where the office of the corporation was in a distant State, where he would not be so justified if he found the general office and general officers at or near the place where the business was conducted." *A fortiori*, one might be justified in dealing with a person in apparent management of the business in California, assisted by another person a member of the Board of Directors and general manager of the corporation, where the office of the corporation was and had been for over forty years conducted and maintained in the city of New York.

It is Hornbook law, under the authorities, that an agency sufficient to meet all the requirements of this case might be created either expressly or ostensibly. Under the benign and just rules of the law, an actual agency is not less potent than an apparent one—one created by the negligence—want of ordinary care—of the principal. If the principal deliberately, or because of a want of due diligence upon its part, knowingly, or negligently permits its special agent to assume general powers or its general agent to assume powers in excess of the authority conferred, it will not be permitted in a court of justice successfully to maintain that it is not responsible for the acts done and performed by such agent in the furtherance of its business. A very fair statement of the rule, as I have gathered it from the books, is to be found in *St. Louis etc. Company vs. Wannamaker*, 90 S. W. 737, where it was said by the Supreme Court of Missouri that: “Apparent authority is such authority as a reasonably prudent man, using diligence and discretion, in view of the principal’s conduct, would actually suppose the agent to possess.” [47]

It is inconceivable to me how the plaintiff, with the knowledge of the facts above detailed, viewing the apparent paramount authority of Nones, president, director and directive head of defendant’s property, and considering it in relation to and with the equally apparent co-operation, acquiescence and participation of Tatham, the general manager, and another director of the corporation, would not be justified in arriving at the conclusion that they were possessed of all the authority necessary to employ him

for the purposes indicated. See *Dover v. Pittsburg Oil Company*, 143 Cal. 501; *Dickerson v. Colgrove*, 100 U. S. 580; *Southern Pacific Company v. City of Pomona*, 144 Cal. 339 p. 350; *Martin v. Webb*, 110 U. S. 7. The language of the Supreme Court of Colorado in *Witcher vs. Gibson*, 61 Pac. 192 is not inapposite. There the Court said, in substance that the principal is bound to keep himself advised as to the course of his business and to know whether his agent is using the specific authority which is granted to him, and if he is not, to advise the parties with whom he is dealing to no longer transact such business with him.

The claim is made and has been given careful consideration that the doctrine of *ultra vires* as applied to corporate activities is applicable here, and that it, in itself, will suffice to deny plaintiff a recovery. Assuming that the doctrine is applicable at all, still I am in thorough sympathy with the proposition that it has no efficacy in this case, because of the fact that the contract solemnly and deliberately entered into by defendant through its authorized agent, has been fully performed by the plaintiff on his part. It would now be in the highest degree unjust to permit defendant to reap the benefit of whatever advantages may have accrued from the performance of the contract by the plaintiff and then deny to the plaintiff the compensation agreed to be paid, because of the claim indulged in that the [48] corporation had no power to enter into the contract at all. This conclusion, I think, is sustained by the language and holding of the Supreme Court of the United States. Eastern

B. & L. Association vs. Williams, 189 U. S. 122.

I do not feel, however, that the doctrine of *ultra vires* is necessarily involved. Plaintiff was not employed to build or operate a railway or to build or operate a power or water plant. He was merely employed to secure options looking to the development of a water supply and water right already on the property of the defendant, and to secure rights of way by deed or otherwise for a railway, leading from defendant's property to the city of San Jose, and the operation of which, both as to carriage of freight and passengers, would presumably and probably directly aid and benefit defendant's property and defendant's business. New corporations were in fact organized, which said corporations were to conduct these respective businesses; but plaintiff was employed, and he rendered his services not in the organization or the conduct or control of such new corporations and new businesses, but in the taking of certain preliminary steps looking to the transaction of these new businesses when the proper and adequate machinery had been provided. In so far as the inceptive features were concerned, however, these preliminary steps had to be taken, and in my judgment were properly taken by the defendant itself, because of the fact that its property and its business was thereby to be benefited. Under the circumstances, therefore, the taking of these necessary preliminary steps was within the competency and the power of defendant corporation, and the plea of *ultra vires* is not sustained. *Brown vs. Winnisimmet*, 11 Allen, 326; *Fort Worth Civic Company vs. Smith Bridge Company*, 151 U. S. 294.

It follows from these considerations that plaintiff is entitled to the relief as prayed for and the appropriate [49] judgment will be entered to that effect.

[Endorsed]: Filed October 2d, 1916. Walter B. Maling, Clerk. [50]

*In the District Court of the United States, in and for
the Northern District of California, Second
Division.*

No. 15,752.

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY, a
Corporation,

Defendant.

**Bill of Exceptions to be Used by Defendant in Any
Writ of Error Hereafter Allowed to the United
States Circuit Court of Appeals, for the Ninth
Circuit, to Review the Judgment Heretofore
Rendered Herein.**

BE IT REMEMBERED that on the 24th day of August, 1915, at the hour of ten o'clock A. M. of that day, at a stated term of the District Court of the United States, in and for the Northern District of California, the above-entitled case came on for trial before the Hon. Benjamin F. Bledsoe, District Judge, presiding, plaintiff being represented by B. A. Herrington, Esq., and the defendant being represented by A. H. Jarman, Esq. A jury having been waived, a trial was had before the Court.

Thereupon a statement on behalf of the plaintiff was made by Mr. Herrington, at the conclusion of which he offered in evidence the depositions of the witnesses in New York, taken upon motion of defendant, together with all exhibits. [51]

By stipulation in open Court between counsel the depositions were considered read. These depositions will follow the testimony of plaintiff's witnesses herein.

Testimony of C. P. Anderson, in His Own Behalf.

Mr. C. P. ANDERSON, the plaintiff, called as a witness in his own behalf, testified as follows:

I first met Charles A. Nones, the president of The Quicksilver Mining Company, in April, 1910, when Mr. Burnett, the attorney for the company, sent for me. At that time I knew that he was the president of The Quicksilver Mining Company. I also knew Mr. J. F. Tatham at that time. He was a director and was also general manager of the company's mining property at New Almaden, Santa Clara County, California.

At the first conversation in Mr. Burnett's office Mr. Nones said that the company had some work that they wanted done in regard to options on land and that Mr. Burnett would explain fully exactly what was required. Mr. Burnett then explained to me and showed me the section on the map (of Santa Clara County) that they would like to tie up in options. Mr. Nones asked me what I would charge them to get these options. I told him it was such a large job, it would be impossible for me to fix any price on it. He said it would be safe enough to leave

(Testimony of C. P. Anderson.)

it until after the work was done, that he would pay well for it and that there would be no trouble between us about agreeing as to the amount. He said he wanted me to go at it right away and I agreed to drop everything that I was doing and start on it. He said the purpose of getting these options was to secure control of the water in the canyon there for power purposes. I am [52] familiar with that country and have lived there for many years and I know every section of the country and am well acquainted with the people in the neighborhood.

Prior to this conversation with Mr. Nones I was in the real estate and insurance business between four and five years and was familiar with land values in that section. Nones did not want anyone to know the purpose of the options until the deal had been consummated.

I made two trips up there and spent a couple of days and looked over the territory and finally concluded that a great deal of that territory, which is very rough and steep, while it was owned by quite a number of individuals, it would not hardly be necessary to have that tied up. After this conversation with Mr. Burnett we went to an abstract company and showed them on the map what was required and they made a map covering about sixteen sections; I would not quite be sure about the number of sections, but it is somewhere in that neighborhood. My instructions at that time were to try and get everything on that map tied up in options, to obtain options on all the property. This land lies about thirteen

(Testimony of C. P. Anderson.)

miles south of San Jose, about a mile south of the Quicksilver Mining Company's property. The first two miles are in the bottom of a canyon which is quite open; the creek then branches off into two canyons. The canyons get very steep and rough. This is the watershed of Los Alamedas Creek, more commonly called Alamaden Creek. Mr. Nones' idea was to go clear to the headwaters of those two streams but upon examination I explained to him that it would be almost an impossibility to tie up that amount of land in options, that it would take too long to do it, and I would not be able to get options long enough to hold. [53] I advised that the land here at the junction of those two creeks and the land between the Quicksilver Mining Company's property on the forks of the creek,—that options be obtained on that. After I had been working on it for perhaps a couple of weeks Mr. Nones said, "I think you are right, we will have to get the junction of those two forks. You will have to go to work immediately and try to get that and also tie up the two ranches between the forks of the creek and the southerly line of The Quicksilver Mining Company's property."

To secure the options upon these properties I wired to a man by the name of Miller, who lived at Randsburg, Kern County, who owned 311 acres. I tied that up for the sum of \$5,000 for twenty days. I did that by wire. I then obtained an option on a fraction over 1100 acres from John B. Lawlor and Tom Lawlor for \$12,000. Mr. Cannon owned 771 acres immediately south of The Quicksilver Mining Company.

(Testimony of C. P. Anderson.)

I obtained an option from him for \$11,500. Mr. Nones was in San Jose when I obtained the Miller option but I believe had left before I got them all procured. The Cannon option was for sixty days and the Lawlor option was for somewhat less, I do not recall now. I notified Mr. Nones that I had these options. Mr. Burnett knew everything as I consulted with him continually as I went along with the work. The option expired. The general manager and myself, and even Mr. Burnett, wired Mr. Nones that the options were about to expire. Nones finally instructed Mr. Tatham to put up a deposit of \$500; \$250 to apply on the Miller option and \$250 on the Lawlor. I notified the people that I had a deposit of \$250. The Lawlor people were very antagonistic at the time. [54] I wired Miller that I obtained a deposit of \$250 and that I supposed it carried with it a commission. Mr. Nones instructed me to get the options any way that I could, with a commission or without, that I was to be paid a straight amount for my salary. Sometimes it is easier to get an option carrying a commission with it than without, so I took them any way I could. Miller wrote me back that the price was \$5,000 and that was what he wanted. I received \$500 from Mr. Tatham and tendered it to Lawlor and Miller and they declined.

Subsequently, when Mr. Nones came out, in discussing the matter with Smith & Emory, who were attending to his work down here, that is, they were to survey the dam site and different things, he said that he had been informed that it was absolutely use-

(Testimony of C. P. Anderson.)

less to buy this land until it had been illustrated whether or not a dam site was possible. He said that after it was surveyed he would take the matter up again and go to it. I returned the \$500 to The Quicksilver Mining Company. My check for the \$500 was drawn directly to The Quicksilver Mining Company and cashed by it. Smith & Emory are mining engineers with offices in San Francisco.

The dam site was surveyed. In fact, the entire section of the country was surveyed, that is, as far as it would be covered with water when the dam was built. These maps were all worked out in detail and were at The Quicksilver Mining Company's offices.

Mr. JARMAN.—You mean The Quicksilver Mining Company's office at New Almaden?

A. At New Almaden.

Q. Not in New York?

A. No, at New Almaden.

After the maps and surveys were made nothing more was done by me. I was simply waiting until such time as Nones felt was the proper time to take up this land. I did not procure any options subsequent to this time from these people. [55]

When Mr. Nones arrived in San Jose on his next visit he stated that it was absolutely necessary for us to have the Miller property, 400 acres located on the northerly side of The Quicksilver Mining Company's property. He said: "You go down to Randsburg and try to make a trade with Miller for this 400 acres of land"; he said that he would give Miller his pick of a sufficient number of acres, fixed at a

(Testimony of C. P. Anderson.)

price of \$60 per acre, to make up the \$5,000; said that he absolutely had to have the land at the forks of the creek; he impressed it very strongly on my mind that it was necessary to do something with Miller. I went down to Randsburg and found that Miller was not anxious to sell. I had known him for a great many years. He would not entertain a trade so I told him that I felt reasonably certain that a deal could be made within sixty days at the original price of \$5,000. He finally consented to give me a new option. I felt that I could go back to San Jose and sell the land which Nones was willing to trade at \$60 an acre and with the money pay for the Miller land.

The second option on the Miller land was given on October 19, 1910. It is as follows:

“Randsburg, October 19, 1910.

This is to state that I have this day given C. P. Anderson & Co., of San Jose, an option on my land on Almaden Creek, which contains 311 acres or thereabouts, for the sum and price of five thousand (\$5,000) dollars, U. S. Gold Coin net to me, and said sale must be fully consummated on or before December 20, 1910. I will furnish abstract and give clear title thereto.

JOHN JAMES MILLER.” [56]

Mr. Nones was in New York again and he didn't forward any money to take up this option and it lapsed. No other option was procured by me for water purposes.

The Senonac Power Company, a corporation, was

(Testimony of C. P. Anderson.)

organized under and by virtue of the laws of the State of California on March 19, 1912.

Previous to this time there was a corporation organized by the name of California Power Company. The object of organizing the Senonac Power Company was to increase the capitalization. I had nothing to do with the California Power Company.

The first time I took this matter up with Mr. Nones was at Mr. Burnett's office in the latter part of April, 1910.

Between April and October, 1910, nothing was done in regard to options except the obtaining of the Miller option the second time. In the mean time I looked up the rights of a ditch company and got the abstract. It was the Pioneer Ditch Company. They had some rights on the creek between San Jose and The Quicksilver Mining Company's property.

Between the lapsing of the last Miller option and March, 1912, these lands were surveyed. My best recollection is that it was surveyed in the spring of 1911. I went up along the creek with Mr. Nones when the surveyors were there.

I became a stockholder of the Senonac Power Company and an officer, to wit, secretary; one share of stock was issued to me which was immediately endorsed by me. I think there was a movement on foot to sell the water. I think that was the purpose of the organization. I could not remember now whether that was absolutely at that time or not, it is so long ago. [57]

Q. Was there any conversation by the president

(Testimony of C. P. Anderson.)

of The Quicksilver Mining Company, or the general manager, in San Jose, in regard to that matter?

A. I think Mr. Nones states that he had found out that the water was valuable and that the capacity of the old water company was not sufficient; he also stated—it was before the Public Utility Act went into effect—that he wanted to incorporate before that Act took effect, that was the object of incorporation at that time, to increase the capital stock and have it incorporated before the Public Utility Act took effect.

The general idea of the organization of this power company was in existence from the time I first started until it was organized. I consulted with Mr. Burnett continually; with Mr. Nones when he was here, and when he was not here, I consulted with Mr. Tatham, his representative.

Nones said that the stock of the Senonac Power Company was the property of The Quicksilver Mining Company.

Mr. HERRINGTON.—It will be admitted that the subscription to the stock shows that Charles A. Nones was a subscriber in the amount of \$11,700, being 117 shares. J. F. Tatham, \$100, the amount of one share; C. P. Anderson, \$100, the amount of one share. D. M. Burnett, \$100, the amount of one share.

It will be admitted that upon the 21st day of March, 1912, one share of stock was issued to Charles A. Nones. There is a cancellation endorsement upon it dated January 31, 1913, or 14. One share was

(Testimony of C. P. Anderson.)

issued to C. P. Anderson upon the 21st day of March, 1912; it appears to be endorsed in blank upon the back by C. P. Anderson. [58]

One share issued to J. F. Tatham upon the 21st day of March, 1912; it appears to be endorsed on the back in blank by J. F. Tatham.

One share issued to A. L. Brassy upon the 21st day of March, 1912, and endorsed in blank by Brassy.

One share issued to D. M. Burnett on the same day, endorsed in blank by D. M. Burnett.

4995 shares issued to The Quicksilver Mining Company, dated the 22d day of March, 1912.

One share issued to William H. Landers on the 31st day of January, 1914; it bears no endorsement.

Another share issued to The Quicksilver Mining Company on the 31st day of January, 1914; this bears no endorsement.

It will be admitted that the total number of shares provided for in the articles of incorporation is 5,000.

Mr. JARMAN.—I will put in the articles. Do you want them in now or later?

Mr. HERRINGTON.—You might as well put them in now if you want them in. We will offer in evidence the articles of incorporation of the Senonac Power Company of California. May they be considered read?

Mr. JARMAN.—The may be considered read.

(The document was here marked "Plaintiff's Exhibit 1.") A copy of which is hereto attached and so designated.

Mr. HERRINGTON.—I think it is admitted that

(Testimony of C. P. Anderson.)

of the 5,000 shares The Quicksilver Company owned 4,995.

Mr. JARMAN.—It is not admitted that they owned it, but it is admitted that a certificate was issued in the name of the company in March, 1912, for 4,995 shares. [59]

The Senonac Power Company was disincorporated. Mr. Landers, to whom a certificate of stock was issued in January, 1914, is the present manager of the Quicksilver Mining Company at New Almaden. The stock was issued to him for the purpose of disincorporating.

A deed was executed by The Quicksilver Mining Company to the Senonac Power Company with reference to rights of way for power. The deed was in the possession of Mr. Burnett, the attorney for the mining company.

Mr. HERRINGTON.—If your Honor please, I find upon consulting Mr. Jarman that the deeds we have referred to are not here in the courtroom. They may be produced, and I apprehend the court will continue this matter, if the case goes over, until the day after to-morrow.

The COURT.—Yes.

Mr. HERRINGTON.—I think possibly there is no dispute about the question of deeds, and that being the case it may not be necessary to produce them, but if they are required we can produce them later.

A. As I understand it, Mr. Anderson, your recollection of that deed is that it was a conveyance from The Quicksilver Mining Company to the Senonac

(Testimony of C. P. Anderson.)

Power Company of certain water rights and privileges possessed by the Quicksilver Mining Company?

A. Yes, sir.

Q. What became of those rights, so acquired by the Senonac Power Company, at the time of the dissolution of the corporation—the Senonac Power Company?

A. The deed went back to The Quicksilver Mining Company.

Q. Who executed that instrument?

A. It was executed by myself as secretary and Mr. A. L. Brassy, as vice-president. [60]

Q. And whatever rights were acquired by the Senonac Power Company from the Quicksilver Mining Company passed back to them at the time of the dissolution of the Senonac Power Company?

A. Yes, sir.

RAILROAD PROJECT.

In the spring of 1911 I took up with Mr. Nones the matter of a proposed railroad company. Mr. Nones first came to my office and stated that better transportation was absolutely necessary for the mines, that the company expected to put up a paying plant there, and that the ore would have to be more cheaply moved than it could be under the present system of hauling; he asked me how I thought the people living along the line between San Jose and New Almaden would entertain a proposition, that is, in the way of giving rights of way. I told him that I thought the people would be very glad to do something, that they were all interested in better trans-

(Testimony of C. P. Anderson.)

portation. So he said: "Tomorrow morning you go out and see as many as you can of the owners nearest to The Quicksilver Mining Company's property and arrange for a meeting." He asked me where would be the best place to meet and I told him I thought the school house would be the best place—the Pioneer School House. He says, "I am leaving for San Francisco now, if you make these arrangements by 12 o'clock to-morrow phone me at the Palace Hotel and I will come and attend the meeting." So I fixed the meeting for 8 o'clock that night. Mr. Nones told me to get a machine from Letcher's garage and meet him at the train in order to get him out there before 8 o'clock. The school house is about eight miles from San Jose on the main road [61] to the mine, commonly known as the New Almaden Mine.

To call this meeting I went out and interviewed possibly ten or a dozen owners of property in the vicinity and they agreed to be at the school house that night at 8 o'clock. I then returned to my office and called Mr. Nones at the Palace Hotel and told him of the meeting. I met him at the train and took him to the meeting. When we arrived there Mr. Nones sent the machine up to the mine to bring Mr. Tatham and he was present when the meeting was called. I introduced Mr. Nones and he said that The Quicksilver Mining Company needed better transportation and he supposed that the rest of them did and that he contemplated building an electric line and he said there would be no stock sold, that The

(Testimony of C. P. Anderson.)

Quicksilver Mining Company would pay for the building of the road, would take all the stock; but if there were any residents living along the line who wanted some of the stock they could have it. He intimated that it was not a stock selling proposition.

I suggested that it would be advisable to have a committee of the residents appointed to work in conjunction with me; that it would make the work easier and would facilitate matters. A committee of five was appointed to work with me to see what could be done along the line as to a right of way. Nones asked at that time that the committee try and produce a right of way free gratis from San Jose to New Almaden. We found afterwards that that was an impossibility; a great many people would rather donate money than give a right of way and have the cars running in front of the house. It took quite a lot of work to try and suit them all. Between San Jose and Almaden is a well defined public highway through a closely settled district, for the first six miles country homes with small orchards.

[62]

At a subsequent meeting the committee reported that we could obtain rights of way in some instances and in others could not as the people could not afford to give it. We figured on collecting money from other residents who would benefit from the road and using this money we might be able to secure a right of way.

Mr. Nones told me he depended entirely on me to

(Testimony of C. P. Anderson.)

produce the rights of way and where it was impossible to get them that franchises would take the place of them; that the Quicksilver Mining Company would pay me for my services, and he wanted me to be very particular about getting everything correct.

Before making the survey, myself and one or two of the committee canvassed the matter and discussed it with people living along the line. I finally made up my mind that a preliminary survey of the proposed line was necessary and told Mr. Nones so and he employed Mr. Herrmann, a civil engineer, residing in San Jose, to make it. The survey was made. A map was made of this proposed right of way. It runs from the southerly city limits of San Jose to the mine, a distance of about twelve miles. A branch line to what is known as the Senator shaft, in order to facilitate the shipment of ore, was contemplated. I had a petition drawn up to declare this road a county road and we afterwards obtained a franchise to run the proposed line over this road. The road ran along what is known as Almaden Road and we had to secure rights of way from every one until we struck the Almaden line. We ran on the side of the public road, 15 feet outside the road.

The witness here identified a map and a diagram marked "Diagram 1 for Identification" and "Diagram No. 2 for Identification," the originals of which are now on file with the clerk of [63] this court. By agreement of counsel same are not included in this Bill of Exceptions, as they are presently deemed

(Testimony of C. P. Anderson.)

unnecessary. Should they become relevant or necessary in any hearing on this Bill of Exceptions, it is agreed that they may be produced by either party and made a part of this bill.

Q. Just tell the Court what was done by you in regard to getting this right of way for the purpose of constructing this road.

A. The first meeting, I think, was held about the first of May. I worked continually until sometime in August. At the beginning of August we had a preliminary survey made. I think it took some two or three months to locate the line. I was working continually.

Q. That was May of what year?

A. May of 1911.

I went out with Mr. Herrman every day he was out. I knew the feeling of the people along the line and I had some idea about where the location might be made. He was working under my instructions all the time. There were very few changes made from the plan we had outlined.

Q. And how long were you working on this survey?

A. I should think about three weeks, two or three weeks.

The line, as surveyed, went through private property. I had options signed up on the property which ran for six months; before the six months expired the committee made a proposition to me to submit to Nones and Mr. Nones submitted a proposition to them, which was subsequently adopted. That is, he

(Testimony of C. P. Anderson.)

submitted a proposition to the citizens living in the neighborhood of the proposed right of way, which proposition was in writing, and is as follows: [64]

Letter, September 6, 1911, Nones to Schuman.

“New Almaden, Cal., Sept. 6, 1911.

H. Schuman, Esq.,

Chairman of Committee on Proposed Railroad
from San Jose to Hacienda,

My dear Sir:

Mr. C. P. Anderson has submitted to me the proposition of your Committee with regard to the building of the railroad from San Jose to Hacienda, and I take pleasure in submitting to you my proposition for the consideration of the Committee, namely:

That your committee obtain and collect the contemplated subscriptions, and accept all rights of way subject to the provisions hereinafter set forth;

That the commencement of the building of the railroad will not be later than December 6th, 1911, and the completion of the building of the railroad will be within fifteen months thereafter;

That the committee make such arrangements with me that upon the final completion of the building of the railroad they will deliver to me the cash collected upon subscriptions in a sum not less than forty-five hundred (\$4500.00) dollars and convey to me or my assigns the right of way that may have been gratuitously offered or donated; the said cash and the conveyances for the rights of way last mentioned shall be delivered to two trustees consisting of Mr. J. F. Tatham and another person to be selected by the

committee before the sixth day of December, 1911, to be held by such trustees and to be delivered by them to me or my assigns on the completion of the building of the railroad;

That I or my assigns will furnish the money requisite to [65] pay for the rights of way where present options call for money payment after the receipt by me or my representative of all public franchises for running on such parts of the public highway as may be applied for;

That when operated cars are to be run over said road at least three trips daily each way between the two terminals, and three more trips daily each way between the San Jose terminus and Downer Avenue, and that on all of such trips cars will stop on signal at all road crossings and lanes and at intervals of a quarter of a mile between such road crossings and lanes wherever that or a greater distance may exist between road crossings and lanes, provided that in addition to the foregoing the privilege will be reserved by the operators of the road of running through or local service in which cars may stop at fewer or not points between starting and the end of each trip;

That no time during which the building of said road is interrupted by strikes, mobs, the elements, public enemy, federal, state or county authority, or by any process of law or process or order of Court shall be deemed a part of the fifteen months above given for the completion of the building of said railroad, and that in case of any such interruptions for any such reason or by any such cause or causes, the

duration of such interruption shall be added to the said fifteen months at the termination thereof and shall be considered as a part of the time, together with such fifteen months from December 6th, 1911, in which the building of said railroad may be completed.

Sincerely,

CHARLES A. NONES." [66]

The offer of Nones was accepted by the committee. We took out the subscription list and got it signed by people living along the road and within a mile or two on either side. We must have gotten between eighty and one hundred subscribers. I was out all the time. My entire time was consumed on the railroad matter, all that time, in fact, all of the year 1911. The total amount of subscriptions secured was \$4,500. We collected a little over \$4,500, a couple of hundred was in notes. Mr. Tatham, referred to as trustee, was a director and manager of the mining company. The committee collected the \$4,500.

In the mean time Mr. Nones sent me \$2,000. By that time the San Jose and New Almaden Railway Company had been incorporated; J. F. Tatham was treasurer of the railroad company. I immediately check it over to the railroad company and the money was checked out for rights of way. Nones sent the \$2,000 from New York. \$650 was sent by Western Union and \$1,350 was wired to my bank and placed to my credit. I secured deeds and grants of rights of way from property owners along this proposed line. We went out and got them, taking a notary

along with us, and settled the matter then and there.

There was a great deal of negotiation leading up to the actual securing of the deeds. I did the negotiating in this regard and also had a lot of trouble to get a form of deed that would suit all. Finally the different attorneys agreed upon a form of deed and then we had no trouble in getting the rest of the people to accept it. These deeds provided that the property would revert to the original owner in the event that the railroad was not completed. Quite a number of the properties were mortgaged and it was necessary to secure partial releases in order to convey the proposed right of way. I got them. I imagine there were [67] between thirty and forty deeds for right of way which were procured. Mr. Nones finally told me not to procure any more property where we had to pay for it, to abandon that and get a franchise in place of it. Mr. Burnett and Mr. Herrmann attended to obtaining the franchise but I was with them all. The franchise was required over the Almaden road. The franchise was applied for in my name. When it was sold it was bought by the San Jose and Almaden Railroad Company, which had in the mean time been incorporated. There was also a second franchise secured for the branch line to the Senator shaft, which is located in the northwesterly part of the company's property and is where deep mining is done at the present time. In order to get this franchise for this branch line I got out a petition to the Board of Supervisors to have some property condemned and a public road declared. My ef-

forts were successful and a franchise was procured over it. A public road was declared on October 2, 1911. Mr. D. M. Burnett performed all the legal services in connection with these matters. He was the attorney for The Quicksilver Mining Company and handled all legal matters. Everything was submitted to Mr. Burnett and approved by him. Application for the franchises was handed to him. I spent a great deal of time consulting with Mr. Burnett and I went to him for instructions. He acted as president of the railroad company and I kept him posted with everything that was going on. I was a director and secretary of the railroad company; also secretary and director of the Senonac Power Company.

The railroad company was incorporated under the laws of the State of California on October 19, 1911. A copy of its Articles of Incorporation was introduced in evidence by plaintiff [68] and marked "Plaintiff's Exhibit 5," a copy of which is attached hereto, made a part hereof, and so designated.

Thereupon, counsel for plaintiff stated from the Articles of Incorporation that it appears that the capital stock is \$120,000; 1200 shares at \$100 per share. The original subscribers are:

C. P. Anderson	1 share
J. F. Tatham	1 share
D. M. Burnett	1 share
Charles A. Nones	117 shares

In this connection I suggest that we stipulate that the certificate book of the corporation, according to the stub, indicates that one share of stock was issued

(Testimony of C. P. Anderson.)

to C. P. Anderson on October 20, 1911, and that on the back of it is the blank endorsement of C. P. Anderson.

The same is true as to one certificate issued to D. M. Burnett and J. F. Tatham. Certificate No. 3, same date, purports to have been issued to Charles A. Nones for 117 shares, the original stock comes from the possession of the attorney for the defendant. The Quicksilver Mining Company, it bears no endorsement upon the back.

Mr. JARMAN.—I can not stipulate as to your last statement. These books were furnished us by Mr. Burnett, who was the attorney for that railroad company.

Mr. HERRINGTON.—It will be considered that they were furnished to Mr. Jarman by Mr. Burnett; Mr. Burnett is the attorney for the railroad company and also an attorney of record in this case for the defendant, The Quicksilver Mining Company. That is correct, is it not?

Mr. JARMAN.—That is correct. [69]

I was present at the incorporation of the railroad company. Mr. Nones was here at that time. I brought the papers down to the Palace Hotel and they were signed there before a notary. That the night before he was leaving for the east.

Q. Was there any conversation at any time between you and Mr. Nones or between Mr. Nones and anyone else in your presence as to who he was taking this stock for, the stock that was issued to him by the San Jose & Almaden Railroad Company?

Mr. JARMAN.—If your Honor please, I have not interposed an objection heretofore for the reason that the legal points to be raised in this case can be raised at the conclusion of the testimony and likewise raised in the defense which we have specially pleaded, but I desire now to interpose an objection to the form of this question in that Nones' declarations cannot bind this defendant; in other words, there must be something else in the record other than Nones' declarations in order to bind the defendant as to Nones' acts.

The COURT.—Yes, that would seem to be well taken; you can not prove an agency by the declarations of an agent, extra-judicial declarations.

Mr. HERRINGTON.—No, if your Honor please, but I take it that in conjunction with the testimony that has heretofore been presented in the deposition showing that \$3,000 of the Quicksilver Mining Company's money had been used for the purpose of promoting this corporation, and for the purpose of procuring rights of way, as appears from the minutes of the defendant corporation which are in evidence; and also the testimony of Nones himself, given in the deposition, that the company did own all of the stock of the San Jose [70] Railroad Company; and also the report of Nones, which is evidence as one of the exhibits attached to his deposition showing that this railroad was in contemplation and was to be constructed for the use and benefit of the defendant corporation, and the more important proven fact that he was the president of the corporation, in other words,

their acquiescence, their holding out and their accepting the benefits of this executed contract would permit him, although he is the president—not a declaration for the purpose of proving his agency, but for the purpose of proving what his corporation actually did, and for the purpose for which he was holding it, I think it would be competent for him to say for what he was holding that stock, or for whom he was holding it, and that it would be competent for him to say that he was a trustee in regard to that stock.

Mr. JARMAN.—That being your theory, then Mr. Anderson's testimony in that regard is objectionable upon the ground that it is hearsay. If Mr. Nones testified directly to that fact, it is sufficient in this case.

Mr. HERRINGTON.—It would not be hearsay, it already being proven that Mr. Nones is the agent of the mining company.

The COURT.—The keystone of your arch is, there being an agency proven—there is no doubt about there being an agency, the question is whether or not there was authority to do the things that are sought to be charged against the defendant. If that has been proven, then the act—and I apprehend this would be a part of the *res gestae* in so far as that goes, a declaration as a part of the conduct of the defendant acting within the scope of his authority, and of course it would be admissible against the principal. Whether or not that has been proven, I am not prepared to pass upon, because I do not know all of [71]

the proof. However, I apprehend that the vice which Mr. Jarman seeks to have eliminated, could be corrected by limiting the testimony merely to a declaration on the part of the agent if he be proven to have been the agent with the authority charged, as to the purpose for which the stock was taken in his own name, but for no other purpose. It is purely incidental, anyhow, I apprehend. There is no question about it, is there?

Mr. JARMAN.—We really do not know. We only know what Mr. Nones said about the matter. That is the truth of the matter, your Honor.

Mr. HERRINGTON.—You know he put up the money in the first instance?

Mr. JARMAN.—In order to give your Honor a little enlightenment as to the situation; at the time this money was being expended, and at the time that it was actually expended, the Board of Directors of The Quicksilver Mining Company and its stockholders knew nothing about either the power company or the railroad company; they did not know that one single dollar of its money had been paid out by its treasurer upon the order of its president for the purpose of organizing a railroad or a power corporation. Long after the money was paid out, the matter was presented to the Board of Directors by the president, after the thing had been done and the money was gone, and the Board of Directors ratified the expenditure of \$3,000 at that time, when, as a matter of fact, there had been over \$5,000 expended and

of which no report had been made. That is the situation, as the record will disclose, so far as the defendant is concerned. The ratification of the \$3,000 which had been expended and ratified, the ratification or the attempted ratification by the [72] Board of Directors was long after the money had been paid out. It was a condition that then confronted the Board of Directors, which they deemed best to dispose of in the easiest manner. The question of authority, as disclosed in the depositions which have been taken, and especially by the minute-book, no authority is shown whatever as ever having been vested in the president or any other officer or director of the corporation which in any way conferred any power to organize either of these corporations or to make any expenditure on behalf of these corporations; on the contrary, the last record—the first and only record, you might say in the meeting of the Board of Directors disclosed a violent objection on the part of the directors to *engaging* in any of these enterprises, and leaving the matter open with a suggestion that an engineer be employed to determine whether it was feasible or not. Now, I am not trying to argue the case or get into a conflict with counsel, but I am simply stating the situation at this time as disclosed by the record, so that your Honor can see the position assumed by defendant in this case; and so if I make any objections hereafter you Honor can appreciate the force of my objections. I will ask counsel if the question framed is limited to the matter indicated by your Honor, not

for the purpose of proving agency or authority, but simply for the purpose of proving a part of the *res gestae*. I have no objection to that. I do object to it being introduced in proof of alleged agency, or in proof of authority to do an act.

The COURT.—It would seem to me that your position is incontrovertible in that respect. Furthermore, if the agency or the authority within the agency, the authority to do the particular thing, using the word “agency” in the generic sense, is proven, it would be unnecessary, of course, for this declaration [73] to be admitted in order to prove any part of plaintiff’s case, because if the president of the corporation had authority to do these things, it is no concern of plaintiff or no concern of the corporation what he did with the stock. He might have given it away. The question is did he have authority to bind the corporation in the matter of organizing these corporations.

Mr. HERRINGTON.—That would be a matter for your Honor to determine after all the evidence is in. I think we can satisfy your Honor from the authorities that we have proven authority in so far as a want of any authority would permit the corporation to defeat the claim for services under an executed contract.

The COURT.—I understand the situation in that respect.

Mr. HERRINGTON.—There is a distinction there that the courts have drawn.

(Testimony of C. P. Anderson.)

The COURT.—Yes, and very properly so. I am rather inclined to think—I am not entirely free from doubt, but I am rather inclined to think that this evidence is competent. If counsel have no objection to its admissibility within the limitation suggested by the Court, which is to the effect that it will be considered by the Court, only in the event that other evidence proves the existence of the agency as claimed by the plaintiff, it can be admitted. It cannot do any harm anyhow in that respect. The Court is not going to pay any attention to it. If the Court comes to the conclusion that this man had authority to bind the corporation, I don't care what became of the stock.

Mr. HERRINGTON.—I think your Honor is correct in that regard.

The COURT.—The objection will be overruled with that understanding. [74]

Mr. JARMAN.—I have no objection if it is limited to that. (Question re-read to witness.)

A. For the Quicksilver Mining Company.

After the incorporation of the railroad company one meeting was held, to wit, October 20, 1911. This was the meeting wherein the Board of Directors organized.

After the organization of the corporation practically all of the \$2,000, which I turned over to Mr. Tatham, was paid out by Mr. Tatham as secretary of the railroad company. It was paid for rights of way. Mr. Burnett, president of the company, knew very well we were trying to get these rights of way

(Testimony of C. P. Anderson.)

straightened up. The deeds were made out and submitted to him. \$1,200 was paid into the treasury as required by the laws of California.

Q. By whom and under what circumstances was that paid?

A. The money was furnished by The Quicksilver Mining Company.

Q. What became of that money?

A. They used enough of that money to pay for the second franchise and the balance was loaned to The Quicksilver Mining Company by the San Jose & Almaden Railroad.

The COURT.—I don't understand this. I thought you were talking about money paid into the State.

A. No. It was money necessary to be subscribed under the articles of incorporation. You had to have \$1,200 in cash paid into the treasury of the railroad company. Tatham was treasurer.

Q. What else, if anything, was done by you, Mr. Anderson, after the procuring of these rights of way and franchises and the organization of the corporation?

A. We were waiting for Mr. Nones or The Quicksilver Mining Company to furnish the money to go ahead and construct the road. I had nothing to do with letting any contracts or anything, [75] because there were never any let. All I had to do was to furnish the franchise and the rights of way. Several contractors were taken over the line and figures were obtained as to the cost of construction.

(Testimony of C. P. Anderson.)

Q. The only services you were to render were to procure the rights of way and the franchises?

A. The rights of way and the franchises.

Q. What did you accomplish in that regard as between the City of San Jose and the terminal of the railroad?

A. The entire line was completed so far as the rights of way and franchises were concerned. They were ready for construction to begin at any moment.

Subsequent to the completion of my work, or about the time of the substantial completion of it, Nones returned to California. He was here during March of 1912 and spent quite a long time here, a couple of months or perhaps longer.

Q. Did you take up the matter of your compensation with him?

A. He took it up with me. He said that when we got up to Burnett's office, we were on our way over there then, that we would have an understanding as to the amount of money I was to be paid for the railroad; he said, "Something may happen to me." When we arrived there it was taken up. Mr. Burnett had another client that he had to attend to and he stepped out of his inner office into his outer room and I was handed a note there that was written by Tatham and signed by Mr. Nones for the sum of \$4,500 for work done on the Almaden and yet to be done. The second franchise at that time had not been obtained. The rest of the rights of way we had options and everything for and it had all been at-

(Testimony of C. P. Anderson.)

tended to. The work [76] was completed to a certain extent at that time. All work to be done by me not then completed I subsequently completed.

Q. He handed you this paper? Have you got that paper with you? A. Yes, sir.

At or about this time I had a conversation with Mr. Nones concerning my services rendered the Senonac Power Company. We discussed it before we went to Mr. Burnett's office, where I received this note in regard to the railroad. Nones said I had done a great deal of work on that and other things and he says: "It is expected that the water proposition will shortly be sold for quite a sum of money, and I will see that you are paid at least \$2,500 for your services on that." This sum was independent of my expenses in connection with these services.

Q. What, if any, conversation did you have as to who was to pay the moneys which you had outlaid in this matter?

A. The Quicksilver Mining Company.

Q. Were you ever paid anything by The Quicksilver Mining Company for any moneys that were outlaid by you?

A. I was paid \$60 expense money while I worked on the water options; it included my trip to Randsburg.

I paid out for expenses in connection with the railroad company \$411 which was agreed to by Nones, which amount has not been paid me. \$120 of that amount was laid out by me for one right of way.

Q. Have you the note you referred to?

(Testimony of C. P. Anderson.)

A. Yes, sir.

Q. The paper you have handed me is dated March 15, 1912, purporting to be signed by Charles A. Nones, and is the note you refer to? [77]

A. Yes, sir.

Mr. HERRINGTON.—We offer this in evidence. It reads:

Plaintiff's Exhibit 6—Letter, March 5, 1912, Nones to Anderson.

“New Almaden, Cal., March 5th, 1912.

“C. P. Anderson, Esq.,
San Jose, Cal.

Dear Sir:

For services rendered and to be rendered on the line of San Jose & Almaden R. R., I hereby agree to pay you the sum of forty-five hundred (\$4500) dollars, payable on completion of the road.

Yours truly,

CHARLES A. NONES.”

Q. Mr. Anderson, was there any statement or declaration made to you or to any one else, or made to you at that time, with reference to when this road would be completed?

A. Yes, there was a statement made by Mr. Nones at that time in Mr. Burnett's office that he had bought the rails, ties and fish plates and that the road would be completed in ninety days.

Q. Was there anything said to you by him as to when you would be reimbursed for the moneys you had laid out of our own pocket?

A. That was to be paid at once. He said he would

(Testimony of C. P. Anderson.)

pay it before he left at that time, that he would send me a check for it.

Q. Was there anything said to you at that time as to when you would be paid for the services rendered in connection with the Senonac Power Company?

A. At the sale of the water company, which he said would be before the road was completed, he said that the sale would [78] be made most any time.

I have never been paid for the work I did for the power company. Exhibit 6 was written in Mr. Burnett's office in San Jose by Mr. Tatham and signed by Mr. Nones and handed to me.

Mr HERRINGTON.—You may take the witness.

Cross-examination by Mr. JARMAN.

I first got acquainted with Mr. Nones in the spring of 1910. Prior to meeting Mr. Nones in April, 1910, I had been introduced to him by the manager of The Quicksilver Mining Company, Mr. First. Originally Mr. First asked me, before Mr. Nones ever came out west, to give him an idea from a real estate man's point of view what the land could be sold at, the farming land, and I made out an estimate of that and Mr. First sent it east. When Mr. Nones arrived I was introduced to him as the man who had made the estimate as to the value of the farming land.

Q. So that prior to meeting Mr. Nones in Mr. Burnett's office, you had some dealings with him with reference to the sale, or proposed sale, of the company's land?

A. Nothing but just simply gave him an estimate

(Testimony of C. P. Anderson.)

of what I thought the land would readily sell at.

Q. You discussed it with him?

A. No. He said that he had seen the estimate but that he would not know on that trip whether the land would be sold or not; he said, "I won't know anything about it until I come back to California another time."

Q. What did he say?

A. He said he didn't know whether the land would be sold [79] until he had made another trip to New York.

Q. Did he tell you why he would have to make another trip to New York? A. No.

Q. Didn't he tell you it would be necessary for him to put the matter up to the Board of Directors?

A. No, sir, he did not.

Q. Now, as a matter of fact, Mr. Anderson, you did sell considerable lands for The Quicksilver Mining Company, did you not? A. Yes, sir, I did.

Q. And received a commission for it?

A. Yes, partly.

Q. What is that?

A. In part, I received a commission.

Q. Well, you received a commission, no matter what size it was, on every sale you made?

A. I did.

Q. Before the deeds were passed, did you know whether or not they were authorized and ratified or approved by the Board of Directors of The Quicksilver Mining Company before they were delivered to the purchasers?

(Testimony of C. P. Anderson.)

A. Some of them were ratified afterwards. I was present when Nones and Mr. Burnett discussed the resolution that his Board had passed for the sale of some land, by which his Board instructed him to sell but not to convey; people objected that the word "convey" had not been mentioned in the resolution.

Q. That was merely a defect in the resolution which Mr. Burnett discussed and objected to, and it had to be passed again? A. Yes, sir. [80]

In October, 1910, I received \$1,000 as commissions on land sold to Clayton et al. In November I received a commission of \$325 for lands sold to Shuman and in February, 1911, another commission of \$75 for land sold to Shuman; and \$325 on land sold to Boles. In January, 1911, I received another commission of \$52.50 for lands sold.

Q. After making the sale, you followed it up and saw that the deeds were delivered to the purchaser and the money paid?

A. No, that was entirely up—I never had no deposit on these deals.

Q. But I say you followed it up and saw that the deal was consummated?

A. I was present when the deal was consummated.

Q. You followed the deal from the time you sold the land to the proposed purchaser until it was paid for, did you not? A. Yes, sir.

Q. And in following this deal it was brought to your attention that the resolution passed by the Board of Directors of The Quicksilver Mining Company, authorizing the execution of a deed, was in fact

(Testimony of C. P. Anderson.)

defective in a certain sense, and it was objected to by Mr. Burnett, and the Board of Directors had to pass another resolution with regard to that?

A. Yes, sir.

Q. So you knew that, before the deeds in each instance of land sold were executed and delivered, they were authorized by the Board of Directors of the defendant.

A. The man that bought the land, his attorney would not accept the deed in any other way.

Q. Well, you knew that at that time, in the year 1910? [81] A. Yes, sir.

Q. As I understand you, you met Mr. Nones in Mr. Burnett's office and Nones told you that The Quick-silver Mining Company wanted some options on lands for railroad purposes?

A. No, sir, for water purposes.

Q. And wanted you to go to work right away?

A. Yes, sir.

Q. And you started to work right away?

A. Yes, sir.

Q. Did you ask Mr. Nones at that time concerning his authority to authorize you to do this?

A. Why no.

Q. You didn't question it?

A. No, I didn't question it.

Q. You proceeded to do the things that he requested you to do? A. Yes, sir.

Q. And you continued to do anything that he requested along this line until your service was completed? A. Yes, sir.

(Testimony of C. P. Anderson.)

Q. In other words, so far as you are concerned, you never questioned his authority; is that right?

A. I did not.

I was friendly with Mr. Nones and was frequently with him while he was in California.

Q. So far as the work for the power company was concerned, did you ever have any authority or receive any authority from the Board of Directors of The Quicksilver Mining Company authorizing you to do any of this work? A. No, sir.

Q. Did you ever make any inquiry from the Board of Directors or from the secretary of the company whether Mr. Nones had any authority to do this?

A. I did not.

Q. You simply proceeded to do as he directed you to do? A. Yes, sir.

Q. Assuming that he had authority to employ you to do these things, now, is that true as to the service rendered by you as to the railroad company?

A. Sure. [82]

Q. You made no inquiry of the Board of Directors whether Mr. Nones had any authority?

A. No, I did not.

Q. You made no inquiry of the secretary whether any resolution had been passed authorizing Mr. Nones to instigate or commence the building of a railroad from San Jose to New Almaden?

A. No. I don't believe anyone else in San Jose ever questioned—

The COURT.—Well, you were not asked that.

Mr. JARMAN.—Q. So that, as I understand you,

(Testimony of C. P. Anderson.)

so far as you were concerned, the services which you performed and for which you now seek recovery so far as the defendant is concerned, all that you know about it is that Mr. Nones, who was the president of the corporation, requested you to do it and promises you would be paid? A. Yes, sir.

Mr. HERRINGTON.—Q. Mr. Jarman, by your question, when you say “all you know concerning it,” do you mean by that all the written information, all he knows concerning any authorization?

Mr. JARMAN.—Yes.

Q. Do you know, Mr. Anderson, of any other authority or any authorization whereby you should act as the representative of The Quicksilver Mining Company for looking up options, either for the power company or for the railroad company? A. No.

Q. All of your dealings were with Mr. Nones?

A. All of my dealings were with the president of The Quicksilver Mining Company and his attorney.

Q. With the president of The Quicksilver Mining Company? A. Yes, sir.

Q. You were never in New York? A. No.

Q. You never communicated with New York?

A. I wrote [83] several letters to Nones, addressed to The Quicksilver Mining Company's office.

Mr. HERRINGTON.—I think there is no question about the proposition, Mr. Jarman; it is conceded that his entire services were rendered on the instructions of Mr. Nones as president of The Quicksilver Mining Company, and we knew nothing about any

(Testimony of C. P. Anderson.)

authorization which Mr. Nones had as such president.

Mr. JARMAN.—Q. You knew that the principal office of The Quicksilver Mining Company and the place where its Board of Directors met was in the City of New York, did you not?

A. No, I did not.

Q. You didn't know that?

A. I did subsequently, after I got to work for him, yes.

Q. How long afterwards did you know that?

A. At the next annual election, I guess.

Q. About the time you were getting deeds for the sale of some of those lands?

A. About the June election in 1910. I have been paid nothing on account for my services rendered either enterprise. The \$60 expense money was paid me by Tatham in cash on Nones' instructions. I received \$2,000 from Nones by wire from New York. I turned all this money over to Mr. Tatham as it was received by me.

In reference to the power plant Nones instructed me to obtain options on that land outlined on the map which was made by the Abstract Company, according to Mr. Burnett's instructions.

Q. At the time that you first commenced your services for the railroad company had there been any report made by any [84] engineer on the construction of the railroad or the advisability or feasibility of such a road?

(Testimony of C. P. Anderson.)

A. You mean previous to the meeting which was held?

Q. Yes. A. No, sir, not that I know of.

Q. It all originated possibly with Mr. Nones, so far as you knew?

A. I knew nothing about the railroad at all until the time he came into my office and broached the subject and asked me what I thought of it and asked me whether rights of way could be obtained. That was the day before the meeting.

Q. After you came into the matter, you saw no reports of any engineers on the scheme of building this railroad? A. No.

Q. The only engineer you knew of in connection with it was Mr. Herrmann, who made the preliminary survey? A. Yes, sir.

Q. Did you know of any report being made by competent engineer prior to your commencing your services under Mr. Nones, or while you were so engaged?

A. No, sir, I do not. The options I obtained for the power plant lapsed. The Miller option was taken in the name of C. P. Anderson & Company. All options were taken that way. I did not receive any commissions for obtaining these options.

Q. Did you ever present a bill for these services, for which you now seek to recover, to The Quick-silver Mining Company? A. I did. [85].

Q. When?

(Testimony of C. P. Anderson.)

A. I presented a bill to Mr. Tatham on his last trip to New York during the incumbency of Nones as president. I took the matter up with Landers when he arrived here to take the management of the mine. He subsequently advised me to take up my claim with the New York office, which I did. The bill I sent to New York by Tatham was for \$4,500 and \$411 expenses.

Q. What was the bill you presented when Mr. Landers took charge of the mine? A. The same bill.

Mr. HERRINGTON.—(Addressing Mr. Jarman.) Have you the bill?

Mr. JARMAN.—We have the \$411 bill; we never heard of any other bill.

Mr. HERRINGTON.—We have a copy of it.

Mr. JARMAN.—Q. Have you a copy of the letter you sent to New York by Mr. Tatham?

A. Yes, sir.

Q. Will you produce it?

A. I don't know that it was sent to New York. I simply handed the bills to Mr. Tatham, who was treasurer of the company. He was on his way back to New York then.

Q. That was in the latter part of May, 1913, wasn't it? A. I believe it was around about May.

Q. That was the last trip that Mr. Tatham made to New York before he quit the employ of the company? A. So far as I know, yes, sir.

Q. Have you found the letter? A. Yes.

Q. The statement that you sent to The Quicksilver

(Testimony of C. P. Anderson.)

Mining Company, of which I have a copy, on your letterhead, is under date of May 19, 1913. This is the one you have reference to as having given to Mr. Tatham; is that right? A. Yes, sir. [86]

Q. You presented that to Mr. Tatham here in California? A. Yes, sir.

Q. And that is the first statement of any kind that you presented to the defendant for your services?

A. Oh, no, a statement had been rendered before for the \$411.

Q. To The Quicksilver Mining Company?

A. Sure.

Q. Was it rendered to The Quicksilver Mining Company or to the San Jose & Almaden Railroad Company?

A. Well, I don't know; it was a copy of the same thing that you have in your hand there.

Q. Who did you give it to—Mr. Anderson?

A. I sent it to the New York office.

Q. The New York office?

A. We discussed that right after Mr. Landers came here, and he repeatedly told me that he expected to have the \$411 very shortly for me.

Q. What I am getting at is, the first time you presented a claim to The Quicksilver Mining Company for your services, or for your expenses, was on May 19, 1913?

A. That was on the advice of Mr. Landers to take it up with the New York office.

Q. The first time you presented a bill for your ser-

(Testimony of C. P. Anderson.)

vices or for your expenses for which you now seek to recover, was on May 19, 1913?

A. That I sent to New York.

The COURT.—Was that the first time you presented a bill; you can answer that question, whether it was or not? A. No, it was not.

Mr. JARMAN.—Q. When was the first time?

A. The first time that the bill was presented was in the [87] latter end of October, 1912.

Q. This letter shows it was October 27, 1913: Is that the letter you mean? Aren't you mistaken in the year?

A. This is the bill I forwarded to the home office in New York upon the suggestion of Mr. Landers; but I had rendered a bill to Nones as to the expense money the year previous.

Q. Just as to the expense money?

A. The road had not been completed, the 90 days had not expired.

Q. When you sent the bill for \$411, how did you send it—did you send it to Charles A. Nones, in New York, or to the Quicksilver Mining Company?

A. I handed it to Mr. Nones; Mr. Nones and Mr. Tatham were together in San Jose.

Q. That was in October, 1912?

A. Yes, sir. He promised to give me a check for it the next day.

Q. Did you ever mail that statement, or a statement for your services to The Quicksilver Mining Company, 45 Broadway, New York City?

A. That is a copy of it, the letter you have there.

(Testimony of C. P. Anderson.)

Q. That was in May, 1913? A. Yes, sir.

Q. That was just a month before Mr. Nones quit?

A. No. This letter—I handed Mr. Tatham at that time a statement of the expense money and also the \$4,500, I guess.

Q. Yes, and \$4,500; that was on the 19th day of May, 1913? A. I handed it to him in my office.

Q. My question is this: Did you ever mail a bill for your services and the expenses which you seek to recover in this action to The Quicksilver Mining Company, 45 Broadway, New York City? A. I did, in 1913. [88]

Q. That is, in October, 1913?

A. Whatever the date of that letter is.

Q. That was after Mr. Nones had retired as president? A. Yes, sir.

Q. And after Mr. Tatham had quit? A. Yes, sir.

Q. And that was when Mr. Landers was in charge of the mine? A. Yes, sir.

Q. And that was the first time you had sent to the Quicksilver Mining Company, at its New York office? A. Yes, sir.

I have lived in San Jose and in the vicinity of defendant's mine for a great many years, and have been in the business since 1880.

Q. You testified on direct examination that the \$1,200 which was paid into the railroad company was furnished by The Quicksilver Mining Company? A. Yes, sir.

Q. How do you know it was furnished by The

(Testimony of C. P. Anderson.)

Quicksilver Mining Company?

A. Mr. Tatham brought the money, and he said it was the Quicksilver Mining Company's money.

Q. You base your testimony then that this \$1,200 was furnished by The Quicksilver Mining Company because Mr. Tatham paid the money to the railroad company? A. Well, I base it —

Q. Now, wait a minute: Answer my question.

A. Yes, sir.

Q. Do you know whether the Board of Directors of The Quicksilver Mining Company ever authorized or directed or instructed Mr. Tatham or Mr. Nones to pay this \$1,200 to the railroad company?

A. I do not.

Q. You know nothing about it? A. Nothing.

Q. All you know is the fact that the money was paid by [89] Mr. Tatham, who was the general manager and treasurer of The Quicksilver Mining Company? A. Yes, sir.

Mr. Burnett did all the legal work for the railroad company and the power company. I simply acted as one of the directors and signed the articles of incorporation and attended to meetings, and also acted as secretary. Mr. Burnett prepared the minutes.

My services, so far as the organization of the corporations were concerned, were about the same in each.

I signed the application to the Board of Supervisors for the franchise, which had been prepared by Mr. Burnett. I consulted several of the super-

(Testimony of C. P. Anderson.)

visors and went out with them through the district and showed them where the road would run.

Mr. Nones was in San Jose on March 5, 1912.

Q. How did he arrive at the figure \$4,500, how did he reach that amount?

A. He said he thought it was worth all the money that we collected along the line in the way of cash subscriptions, which was the sum of \$4,500.

Q. You and the committee had collected from owners along the proposed right of way the sum of \$4,500 in the nature of a subsidy? A. Yes, sir.

Q. And that was in the hands of the committee and was on deposit in the bank?

This sum was in the hands of the committee and was on deposit in the bank. This sum was to be paid to the railroad company if the railroad was completed within a certain length of time.

Q. And Mr. Nones had agreed with you that this was the sum of money that you should have for your services? A. An equal amount. [90]

Q. Didn't he tell you that when the road was completed you would get this \$4,500 that was in the bank?

A. He said I would get \$4,500; the money was not payable to me even upon the completion of the road.

Q. What did he say about taking the matter up with the Board of Directors, Mr. Anderson?

A. He didn't say anything; he never mentioned it. He never said that he was going to give me the \$4,500 that was in the bank.

Q. And it was just a coincidence that you were

(Testimony of C. P. Anderson.)

to get \$4,500 for your services; it was a mere coincidence that the amount you were to get coincided with the amount that was on deposit in the bank and was collected from the subscribers?

A. Well, I don't know; it is possible we fixed the amount — he said, "If it is satisfactory we will make it \$4,500, which will be the same amount that you have collected, you and the committee, and which will be turned over to us on the completion of the road." He said the road would be completed in 90 days; he said he had bought the rails.

Q. Prior to the incorporation of the railroad company, certain expenses had been created and moneys had been paid out in the way of investigations, had they not? A. Yes, sir.

Q. You know of that? A. I paid them out, that is, some of them.

Q. Was any money paid out by Mr. Tatham before the railroad company was incorporated?

A. Oh, the only money that went through the treasury of the San Jose & Almaden Railroad was this \$2,000.

Q. Who paid that money and where did it come from?

A. There was not any of it paid to me. I always was [91] told that The Quicksilver Mining Company paid certain bills.

Q. You were told that?

A. Well, I received no money myself from anything.

Q. I am not asking you about receiving any

(Testimony of C. P. Anderson.)

money; certain moneys were paid out; do you know of your own knowledge who paid that money?

A. No, I do not.

On March 5, 1912, I did not know that Nones contemplated retiring as president of The Quicksilver Mining Company, nor do I know anything about the meeting of the stockholders of that Company held on February 15, 1913.

I put in a couple of months of actual time on the water proposition when it started and devoted considerable time later on investigating other matters as directed.

I worked on the railroad proposition continually from the time of the first meeting in 1911, during all of the remainder of that year and one-half of my time in 1912.

The work could have been done sooner but the money was not forthcoming. There was always a delay about funds that kept the thing dragging. It took enough of my time to prevent me from doing much of anything else.

Mr. JARMAN.—Q. Mr. Anderson, did you ever hear of the matter of the construction of the railroad and the procuring of the rights of way, and grading, et cetera, being taken up by the board of directors of the Quicksilver Mining Company in New York? A. No, I never heard about that.

Q. You never heard about that? A. No.

Q. Did you ever know about the resolution approving the payment of \$3,000?

A. The first time I knew of it was when [92]

(Testimony of C. P. Anderson.)

the depositions were filed here in this court and I met you and Mr. Herrington here at the time the case was first set for trial, last April.

Q. Did you ever know in 1911 or 1912 about the proposal of one of the directors to employ an engineer to look the matter over before the board of directors took action? A. No, sir, I did not.

Q. You never knew anything about that?

A. No, I never heard of that.

Redirect Examination.

In obtaining the franchise a \$5,000 bond was required and was furnished by me, with my friends as sureties. One of the water options I secured provided for a commission, the other did not.

Q. Did Mr. Nones know of the fact that this provided for a commission?

A. Why, sure. I rendered a report to him stating what was gross and what was net.

Q. You have a copy of that report here, have you?

A. Yes, sir.

The COURT.—Let me see a copy of that report.

The WITNESS.—Yes, your Honor.

The COURT.—This report is addressed to Mr. Nones as an individual. Why didn't you address it to him as president of the Quicksilver Mining Company?

A. There was no particular reason. It never occurred to me.

I produced purchasers for the lands sold for which commissions were paid me at the usual rate.

In the railroad matter I attended not less than

(Testimony of C. P. Anderson.)

twenty meetings of the property owners along the right of way. There were about 80 or 100 subscribers to the fund that was raised. It was [93] necessary to interview them several times. I did most of the work and possibly interviewed all of the subscribers. These people were scattered along the road between San Jose and New Almaden. Some twenty rights of way were secured. I also obtained a petition to have a private road declared a public highway and obtained some fifteen signatures. I advanced \$150, which was immediately repaid me by The Quicksilver Mining Company.

I was intimately acquainted with most of the people living along the right of way and also made a trip to San Francisco to interview the railroad commission with reference to what was necessary as to filing maps.

I was constantly in consultation with Nones while he was here, Mr. Burnett the attorney and Mr. Herrmann the engineer, as to matters relevant to the business in which I was engaged.

Recross-examination.

The \$150 which I advanced was repaid me in cash by Mr. Tatham, who was also treasurer of the railroad company, who kept all the funds. I do not know whether the money paid belonged to the railroad company or the Quicksilver Mining Company; I do not think there were any funds in the railroad company at that time.

I knew of the negotiations leading up to the purchase of the property by Mr. Brassy. Mr. Burnett

(Testimony of C. P. Anderson.)

prepared the deed and forwarded it to New York for execution. I was at the bank when the deed was returned and the money paid over. I saw the deed. This transaction was about March 18, 1912.

I had no correspondence with Mr. Nones in reference to my claim against The Quicksilver Mining Company, except that I forwarded my expense bill for \$411 when I was rendering the report. [94]

Q. My question is, did you write any letters to either The Quicksilver Mining Company or to Mr. Nones in reference to the claim which you now make against the company, which is the subject of this action? A. No.

Q. You never wrote any letter to either one?

A. I subsequently did write to The Quicksilver Mining Company after Mr. Nones had severed his connection with the company.

Q. That was in October, 1913?

A. Possibly that was the date; I could not tell offhand.

Q. Did you receive any letters either from The Quicksilver Mining Company or Mr. Nones, with reference to the forty-five hundred dollar item for the services to the railroad company? A. No.

Q. Not from either one? A. No.

Nones severed his relations with the mining company at the annual meeting held in June, 1913. I did not know that there was trouble between the stockholders of the company and Nones, as president, until Mr. Landers came up to the mine for the

(Testimony of C. P. Anderson.)

purpose of experting it and examining the books in April, 1913.

I read an article in the San Francisco Chronicle about it; there was also an article in the San Jose Mercury. The article was printed in the San Francisco Chronicle on April 2, 1913, and was offered in evidence by counsel for plaintiff in error for the purpose of fixing the time when the matter of a controversy between Nones and the stockholders was definitely fixed as coming to the knowledge of the witness, and was marked Defendant's Exhibit "A." [95]

Further Redirect Examination.

It was conceded that the witness was not responsible in any way for any dispute between the stockholders of the mining company and its president, nor had he anything whatever to do with the affairs of the company in any shape, manner or form as to the election of Nones or sending him to California to represent the company.

Mr. Tatham repaid the \$150 to me at my office in San Jose.

Testimony of A. L. Brassy, for Plaintiff.

A. L. BRASSY, called as a witness for the plaintiff, testified as follows:

I am president of the firm of Brassy & Company. I know Charles A. Nones. I was vice-president and director of the Senonac Power Company. I had one share endorsed over. I had negotiations with The Quicksilver Mining Company with regard to the purchase of the lands belonging to the company.

(Testimony of A. L. Brassy.)

I negotiated with Mr. Nones and Mr. Tatham with the result that in March, 1912, I purchased about 92 and a fraction acres from the company.

Q. Were there any inducements given you by the president of The Quicksilver Mining Company to make that purchase? A. Yes.

Mr. HERRINGTON.—Q. Were they given to you in writing or orally? A. Both.

Q. I show you this instrument and ask you whether or not you recognize it, purporting to be signed by The Quicksilver Mining Company by Nones? A. I do.

Q. When you say these inducements were given to you in writing, is this the writing to which you refer? [96]

A. That is the writing to which I refer.

Mr. HERRINGTON.—We offer this in evidence, if your Honor please.

Mr. JARMAN.—We object, if your Honor please, upon the ground that it is immaterial, irrelevant and incompetent, no authority shown in Nones to execute any such writing.

The COURT.—Let me see it.

Mr. JARMAN.—And that so far as the record shows it is beyond his authority or power to execute.

The COURT.—What is the purpose of it, Mr. Herrington?

Mr. HERRINGTON.—The purpose is this, if your Honor please; it is contended by the deposition of Mr. Nones, that the construction of this railroad was his own private enterprise, until on cross-ex-

amination he was compelled to confess that the railroad *was, its construction* was contemplated as incidental to the operation of the mine and to the sale of land by the Quicksilver Company; this, if your Honor please, is a declaration of the Quicksilver Mining Company and of Nones. We will show, if your Honor please, after this sale was actually consummated, which fact was known to the defendant in this action, that at all times during all of the proceedings of the proposed construction of this railroad it was held out to the plaintiff that Nones had full power and authority to go ahead and procure his employment and secure his services, and that under those circumstances, as one theory, the plaintiff is entitled to recover; in other words, the defendant corporation permitted the people of the community [97] to believe that he had full power and authority to contract for the services of Mr. Anderson; that these facts were known to the plaintiff; now the defendant corporation held out the fact to the public that Mr. Nones had this authority; that is one theory.

The COURT.—Of course that is the question that we have to try, whether they did hold him out; if they did, you are no doubt entitled to a commission; if they did not another question is presented. The question is, can you prove they held him out; that has never been brought home to the corporation itself.

Mr. HERRINGTON.—We contend that we can prove those incidental matters which occurred in the regular transaction of the business of the corpora-

tion; by the testimony already in we have shown to the Court, by proof, that in his printed report to the corporation, the board of directors, he recites the fact that the rights of way for this railroad had been procured and all of the real estate belongs to the defendant The Quicksilver Mining Company, which printed report is here as an exhibit; we have also shown to the Court that the moneys of The Quicksilver Mining Company were the moneys that were forcing this enterprise, and we have also shown that at the stockholders' meeting it was voted that all of the acts of the officers be approved; we say that those things have sufficiently been brought home to the defendant corporation, that he was pursuing this course on this coast; we do not feel that the corporation is any more sacred than an individual, and if an individual living in New York City would permit a man to do as Mr. Nones did on this coast, he having absolute control, and all control of the business of [98] the defendant in this State, having represented the defendant from June, 1909, until June, 1913, over a period of four years, we are entitled, if your Honor please, to rely upon those representations.

The COURT.—No doubt. But you are now seeking by this offered evidence here, as I gather it, to show something done by Nones, which was brought to the attention of the plaintiff and presumably upon which the plaintiff himself relied, but you do not in your offer seek to bring it home to the corporation. If the things that you have suggested are true and if the legal conclusions follow from your state-

ment then you do not need anything of this sort; if they are not true this is not competent as against the defendant. I do not see how you are going to get away from the situation. If there was an agency established, ostensible agency due to things upon which the plaintiff relied as between the defendant corporation and its president, that is all you need; you do not need a reliance of the plaintiff upon anything else that may have transpired between the corporation and a third person, or between Nones the president and a third person; it would be immaterial to this controversy. If such agency was not established then you could not establish it by showing something that transpired between the president of this corporation and a third person upon which even the plaintiff did rely unless you bring it home to the corporation and establish in some way it was cognizant of that fact, or through its negligence in permitting the acts to be done it was responsible therefor.

Mr. HERRINGTON.—I think you are correct, and I have no hesitancy in saying to your Honor that we will contend that the [99] president of the corporation receiving notice, that is notice to the corporation; no other person so close to a corporation can receive a notice than the president himself, and unless it can be shown that—

The COURT.—If that be true whatever the president does binds the corporation; that is the logic of that.

Mr. HERRINGTON.—Whatever the president

does, if your Honor please, along the general lines—

The COURT.—If the president did receive notice, if notice to the president is notice to the corporation, then anything that is done and is brought home to the corporation, that binds the corporation; that is the logic of that; I doubt that.

Mr. HERRINGTON.—I do not go that far.

The COURT.—But that is the logic of your suggestion.

Mr. HERRINGTON.—I do not go that far. It is the law if there is notice to be served on the corporation it may be served upon the president, if there is a summons to be served on the corporation it may be served on the president, and that is sufficient service and all that is required. Now then, in discussing the general broad principles I say the corporation is no more sacred than an individual, and if the agent of an individual or a corporation is performing work or doing anything in the general line of the service, anything that he does, the corporation will take notice of; if he is doing something that is *ultra vires*, if your Honor please, I concede that he could be estopped by the corporation or a stockholder or an action in *quo warranto* could be instituted against him by the Attorney General; but that would not bar a recovery upon an executed contract for [100] service under employment by the president.

The COURT.—I cannot escape, Mr. Herrington though, the conclusion that if you were entitled to prove acts of the president upon which the plaintiff relied as showing an ostensible agency in the presi-

(Testimony of A. L. Brassy.)

dent, and merely prove that because he was president, because the knowledge of such acts might be brought home to him, and in that way brought home to the corporation, then your whole case rests upon the proposition that the corporation is bound by the acts of the president; that has got to be the result. If the corporation is not bound by the acts of the president and if there must be something brought home to the governing body of the corporation, to wit, the Board of Directors, then I am inclined to think the evidence is incompetent.

Mr. HERRINGTON.—Would your Honor permit me to introduce that for identification?

The COURT.—Of course, if there is any way—I gather from what you say that you are offering this bare proof as to what was done out here in San Jose with no intention to show that the corporation itself as such was in *any advised* of this transaction in so far as this particular paper was concerned.

Mr. HERRINGTON.—I don't know of any evidence that I could produce that will show that fact; I have no knowledge of any such testimony, that is, the fact that it was brought home; whether it was brought home or not I don't know. Just let me read this extract from 163 California:

(Thereupon counsel submitted authorities.)

The COURT.—The objection will be sustained as incompetent.

Q. Did you ever at any time have any conversation with Mr. Nones or did he ever at any time make any

(Testimony of A. L. Brassy.)

declarations to you in the [101] presence of Mr. Anderson prior to the month of March, 1912, as to condition of the railroad or whether any purchase had been made or not to establish the plant?

A. Yes.

Q. What was said by Mr. Nones in that regard?

Mr. JARMAN.—One moment—to which we object upon the ground that it is immaterial, irrelevant and incompetent and if they are offered as declarations of Nones as president of the defendant for the purpose of proving his authority or agency to act in reference to the matters inquired about, without an offer of testimony to charge the defendant or the Board of Directors, we submit it is not a proper way to prove his authority and therefore the objection should be sustained. May I inquire, is that question directed to the alleged testimony or pleadings in your complaint that Mr. Nones said that he bought rails and ties; is that what it refers to?

Mr. HERRINGTON.—Yes.

Mr. JARMAN.—What is the purpose or object; what do you limit the offer to?

Mr. HERRINGTON.—I do not limit to anything.

Mr. JARMAN.—What is its purpose; is it unlimited?

Mr. HERRINGTON.—Absolutely.

Mr. JARMAN.—Then it is offered probably to use for the purpose of proving authority or the extent of authority in Nones as president of the defendant, and to seek to use this evidence for the pur-

pose of binding the defendant, and we object to it as not a proper method of proving authority of Nones to act in the premises. I may call your Honor's attention to the fact that the plaintiff has introduced in evidence the deposition which we took of Mr. Nones, Mr. Swayne and Miss Bowe, and Mr. Nones testified directly that he never made [102] any such statements to anybody; now, they put on witnesses to contradict evidence which they have introduced in the first instance.

The COURT.—I do not see the materiality of statements whether he purchased rails or not; that does not add to the situation at all; if he employed this man and had the authority to do it, that ends it; whether he bought rails or not, that is immaterial.

Mr. HERRINGTON.—Upon one point it would be material, if your Honor please; your Honor will remember the note that was given Mr. Anderson when the road was completed. Mr. Anderson accepted it, but only accepted it with the belief—upon the representations, after the purchase of rails and those things had been made, which was false representations on the part of Nones, the president of the Quicksilver Mining Company to the plaintiff; it might be material to fix a time when this obligation became due.

The COURT.—The law would imply a reasonable time. The objection is sustained as incompetent, the same as the other.

Mr. HERRINGTON.—Upon the other proposi-

tion I would like to call your Honor's attention to the fact that the conversation that I seek to elicit was had after the defendant Quicksilver Mining Company had already put up this money for this preliminary work and after the Quicksilver Mining Company was the owner of this railroad, and it was the president of the Quicksilver Mining Company that was making these utterances about this subsidiary corporation which belonged at that time to the Quicksilver Mining Company.

The COURT.—How does that affect the situation?

Mr. JARMAN.—I think Mr. Herrington is confused in his dates [103] on that matter.

The COURT.—Whether he is or is not, I do not see how it helps the situation, assuming he is correct.

Mr. HERRINGTON.—The San Jose & New Almaden Railroad Company was incorporated on the 19th of October, 1911, and then became the property of the Quicksilver Mining Company.

Mr. JARMAN.—The Quicksilver Mining Company never knew of this railroad or had any interest in it until May 1, 1912, never heard of it.

Mr. HERRINGTON.—Oh, yes.

The COURT.—Even so, a statement of what he had done or was going to do, I do not see that that helps us in determining the amount of his authority in this case, the authority of this person; it stands on the same basis as the last offered evidence, incompetent and immaterial; the objection is sustained.

Mr. HERRINGTON.—This may considerably

(Testimony of J. F. Tatham.)

shorten it, if your Honor please, if I understand your Honor correctly, the only point in the case is the authority of the president.

The COURT.—That is the way it appeals to me, yes. No other contention that you make in the case is there, Mr. Jarman?

Mr. JARMAN.—None.

The COURT.—If the president had authority to employ this man, if he had authority to fix the amount of the compensation, the Court would conclude it would be bound by it.

Mr. HERRINGTON.—That will shorten the matter considerably.

The COURT.—That is my understanding as I view the case.

Mr. HERRINGTON.—As I understand Mr. Jarman, there is no further contention so far as he is concerned.

The COURT.—Yes. [104]

Testimony of J. F. Tatham, for Plaintiff.

J. F. TATHAM, called as a witness for the plaintiff, testified as follows:

I first became acquainted with Charles A. Nones in February, 1910. At that time I was bookkeeper and cashier for The Quicksilver Mining Company. After that time I was general manager of The Quicksilver Mining Company. Charles A. Nones, president of the company, appointed me and fixed my salary. I continued to act as such until June, 1913. My place of business was always in Santa Clara

(Testimony of J. F. Tatham.)

County. I took orders with reference to the operation of the property from Nones.

Q. Was he here or there where the properties are located, during any of the period of time from February to June, 1912?

A. Yes, on several occasions.

Q. Who had supervision and control of the property during that period?

A. Charles A. Nones, the president.

Q. Did he take orders from anyone? A. No.

Q. Were you an officer of The Quicksilver Mining Company? A. Yes.

Q. When?

A. I think I was elected in June, 1911; I am not sure.

Q. What were you?

A. Director and treasurer.

Q. How long did you continue as a director and treasurer? A. Until June, 1913.

I was vice-president and treasurer of the San Jose & Almaden Railroad Company. The stock of this railroad company belonged to The Quicksilver Mining Company.

About \$5,000 was expended for the promotion of the preliminary work of this railroad company. The money paid out [105] belonged to The Quicksilver Mining Company. I paid it out. A portion of it came from the office at New Almaden and a portion came from the New York office. \$3,000 I think came from New York and \$2,000 from the office at the mine. A little work was done cutting down a

(Testimony of J. F. Tatham.)

bluff to the entrance of the Hacienda. It was done by The Quicksilver Mining Company and paid for by it. Surveys were made and paid for by the Mining Company. Abstracts were also secured, amounting to \$225. The survey cost in the neighborhood of \$500. These bills were paid for by the mining company.

I am familiar with the organization of the Senonac power company. There was a proposition advanced to sell that property.

Q. Mr. Tatham, do you know whether or not there were any offers made to pledge the agricultural lands of The Quicksilver Mining Company for the purpose of raising funds to build this railroad?

Mr. JARMAN.—I object to that as immaterial, irrelevant and incompetent unless it relates to a pledging of the property by the defendant itself. What Mr. Tatham ever attempted to do is quite immaterial.

The COURT.—Yes, that is true, if it goes no further than what he attempted to do himself. Of course, it is difficult from the question to determine whether it is competent or not.

Mr. HERRINGTON.—We are not contending that there was any authorization of record for the purpose of giving Mr. Tatham or Mr. Nones authority or power to pledge the property.

The COURT.—What was actually done? [106]

Mr. HERRINGTON.—Q. What was done Mr. Tatham, if anything, with reference to negotiating a

(Testimony of J. F. Tatham.)

loan upon the property of The Quicksilver Mining Company?

A. Mr. Nones instructed me to go to San Francisco and see if I could get a loan on the property; I came to San Francisco and applied for it and got up the data on the railroad and brought it here, and applied for the loan, and negotiations were going on at that time when the water was brought into consideration and negotiations on the loan were stopped by Mr. Nones' order, when the sale of the water was practically consummated.

A deposit of \$1,000 was up on the sale of the water. The total purchase price was around \$325,000; the sale was being negotiated by Smith, Emory & Company. The sale was never consummated. The deposit was returned.

Q. During these transactions were there any negotiations with respect to the establishment of a paint plant? A. Yes.

Q. What were they?

Mr. JARMAN.—I cannot see that that is material in any way.

The COURT.—Of course, that is a very general question.

Mr. JARMAN.—Mr. Anderson makes no claim whatever for any services nor had anything to do with the alleged paint plant.

Mr. HERRINGTON.—I have stated the purpose of this testimony; if the Court holds it is immaterial, it goes to that one particular that I desire to show,

the essentiality of the railroad company in the profitable conduct of the business, the proper and profitable operation of this investment.

The COURT.—What do you mean by that?
[107]

Mr. HERRINGTON.—I mean, if your Honor please, that my purpose and object in offering this proof is to show that the railroad was necessary, the same as a logging railroad or any other railroad in a lumber camp would be essential for the purpose of bringing out lumber or logs where they could be marketed.

The COURT.—It is a matter of local history and general knowledge that this concern had been running for 40 years and taking quicksilver out of this property.

Mr. HERRINGTON.—It unquestionably used to be a very profitable quicksilver mine.

The COURT.—We do not know anything about the profits, but it had been running.

Mr. JARMAN.—Running a hundred years.

Mr. HERRINGTON.—Running a hundred years, but running at a loss, showing a big profit the last year, recently since the war—the quicksilver they are able to get out makes it profitable by using over the old dumps and old furnaces they had, and turning them over, but with millions of tons of refuse upon the dumps that could be made to bring hundreds of thousands of dollars, if your Honor please, which would have been utilized and the transportation of

(Testimony of J. F. Tatham.)

their other ores from new shafts which were seven miles away creates a new condition.

The COURT.—Well, that may be so, but this is very much different from what I supposed you had in mind; a corporation starting out to open a saw-mill, of course it would be understood that certain things were necessary, but the same conditions and the same necessities and the same presumptions would not arise if they had been running the sawmill [108] 40 years, as has been done in this case.

Mr. HERRINGTON.—If they cut all of the lumber within reach, and cut so far back, it becomes necessary to build.

The COURT.—Then it becomes a question whether they want to continue the business any further, and to what extent they want to incur additional expense in order to continue it; I do not see that there is anything that is of moment in this.

Mr. HERRINGTON.—I just want it in the record, so that there would be no question but what I made the point.

The COURT.—The facts that I have stated are true, aren't they? You understand me?

Mr. HERRINGTON.—Yes, the facts are that the mine has been running.

The COURT.—Running for a number of years?

Mr. HERRINGTON.—Running for a great many years.

The COURT.—And in so far as it may be running at all it is running yet without the railroad and without the water power.

(Testimony of J. F. Tatham.)

Mr. HERRINGTON.—Unquestionably that is correct.

The COURT.—That seems to me to dispose of the question of this necessity. The objection is sustained.

The water or power proposition consisted of a creek that had its source above the property of The Quicksilver Mining Company and which ran through the property about three miles in length. There was a section of a dam 122 feet high that could maintain a flow of approximately ten million gallons a day.

Some of the water from this creek was being utilized through a pipe-line by the county for road sprinkling. The pipe-line was approximately eleven miles in length. The county had an [109] option or a lease for fifty years with the right of the company to take it up at any time within twenty years.

Cross-examination.

The Quicksilver Mining Company gave the county a lease on the water. The county owned the pipe line and it gave The Quicksilver Mining Company an option to lease that pipe-line from the county at any time within 20 years.

I went to work for the Quicksilver Mining Company in September, 1905, as bookkeeper and cashier, and continued as such until February, 1910. I worked at New Almaden, Santa Clara County, California. Prior to going to work for the Mining Company I worked for the Edendale Fruit Company for two years; I bought fruit for them, kept books and

(Testimony of J. F. Tatham.)

was shipping clerk. Prior to working for this concern I was with the California Cured Fruit Association.

Q. Had you, prior to entering the employ of the defendant, ever been engaged in any mining business? A. No, I had not.

Mr. Feust preceded me as superintendent. His salary was \$250 a month. When I succeeded him my salary was \$175 a month. I was raised to \$200 and then to \$250 a month.

Q. You also testified that the stock of the Almaden Railroad Company belonged to The Quicksilver Mining Company? A. Yes, sir.

Q. How do you know that it belonged to The Quicksilver Mining Company?

A. When the stock was issued Mr. Nones, the president of the [110] Quicksilver Mining Company said that the stock that was issued to Nones was held in trust for The Quicksilver Mining Company.

Q. So that your knowledge of this fact that you have testified to, to wit, that this stock of this railroad belonged to The Quicksilver Mining Company was what was told you by Mr. Nones, the president of the company? A. Yes, sir.

I never attended a meeting of the Board of Directors of The Quicksilver Mining Company. As general superintendent and as treasurer I made annual reports to the company.

Q. Will you examine the depositions which counsel for plaintiff has offered in evidence? I ask you whether or not those are not the printed reports

(Testimony of J. F. Tatham.)

which you furnished to the Board of Directors at their annual meetings.

A. I furnished the rough draft and that was printed by the president.

After they were printed in New York, I saw copies of them. They were correctly printed. I never noticed or detected any discrepancies.

In the cash-book of The Quicksilver Mining Company, under date of September 1, 1911, appears an item, C. Herrmann, \$200; that was for surveying. I did not know what the services were.

Under date of October 17, 1911; appears an item of \$1,200 as money paid to J. F. Tatham, secretary and treasurer of the San Jose & Almaden Railroad Company; that represents ten per [111] cent of the paid up capital stock of the railroad company. The entry in the cash-book represents sums of money of The Quicksilver Mining Company which were paid out and the entry of \$1,200 referred to, was paid by me as treasurer of The Quicksilver Mining Company to myself as treasurer of the railroad company.

On the opposite page to this \$1,200 entry is a cross entry of \$1,050 against the \$1,200 entry, so that there was only \$150 actually used for the railroad; the cross entry represents the amount that was loaned back to The Quicksilver Mining Company by the railroad company. In other words, the payment of \$1,200 to the railroad company was a bookkeeping transaction with the exception of \$150. The \$1,050 loaned to the Quicksilver Mining Company was not paid back to the railroad company.

(Testimony of J. F. Tatham.)

Q. What authority had you for paying the funds of The Quicksilver Mining Company to yourself as treasurer of the railroad company?

A. The demand of Charles A. Nones, the president of The Quicksilver Mining Company.

Q. That is the only authority you had?

A. Yes, sir.

Q. Did you ever have any authorization from the Board of Directors of The Quicksilver Mining Company authorizing or empowering or directing you as its treasurer to pay any of its funds either to yourself as treasurer of the railroad company or to any creditor of the railroad company?

A. No, sir; no resolution of the board.

Q. To cut a long story short, you acted solely in all these matters upon the verbal order of Mr. Nones?

A. Verbal and written.

Q. Verbal and written; it might be a telegram or it might be [112] a letter. A. Yes, sir.

On page 137 of the cash-book under date of November 2d, 1911, appears an item of \$400; that was money paid out by me as treasurer of the mining company to the railroad company; on the opposite page appears an entry showing that the sum was repaid to the mining company on November 8th.

On December 27th, 1911, appears an item of \$50 charged to the railroad company; that was paid out the same as the other items upon the same authority.

On December 28th, 1911, page 141 of the cash-book, in the *résumé* at the end of the month's proceedings, appears a charge item to the railroad com-

(Testimony of J. F. Tatham.)

pany of \$2,073.24. That represented \$2,000 sent from New York to C. P. Anderson and charged to the railroad company and credited to New York funds.

On page 145 of the cash-book, under date of January 10, 1912, in a *résumé*, appears a charge "to close payroll \$152.16." In February, 1912, is a like charge of \$263.15; in March, 1912, is a like charge of \$793.75; in April, 1912, is a like charge of \$66.13; in June, 1912, is a like charge of \$150; in August, 1912, is a like charge of \$25; in September, 1912, is a like charge of \$160; in October, 1912, is a like charge of \$208.50; in December, 1912, is a like charge of \$280.20; these various amounts appearing on the books of the Mining Company were paid out by me as its treasurer under the direction of Mr. Nones.

Q. You spoke a moment ago of crediting New York funds with \$2,000; will you explain to the Court what you meant by that?

A. The New York office was always indebted to the New Almaden [113] office and when they remitted money to this office they were credited with that amount.

Q. They were credited to that amount?

A. Yes, sir.

Q. How was the charge to the New York office made up, what items went to make up that charge?

A. Remittances to to New York.

Q. Did it consist of any other items besides remittances?

A. When Mr. Nones was out here, if he drew any

(Testimony of J. F. Tatham.)

money it consisted of all money that he got.

Q. When Mr. Nones would come out here he would draw money? A. Yes, sir.

Q. That is, in various amounts? A. Yes, sir.

Q. Did he give you a receipt or a voucher for the money so drawn? A. No, sir.

Mr. HERRINGTON.—That is objected to upon the ground that it is entirely immaterial, irrelevant and incompetent, and it has nothing to do with the issues involved in this case.

Mr. JARMAN.—What we desire to show, if your Honor please, is something that is familiar to counsel and to the witness and to myself; it is that Mr. Tatham as the treasurer of the company paid out the corporation funds upon the say so of Mr. Nones absolutely; Mr. Nones would go into the safe and take out \$500, or \$1,000 or \$1,500 or \$1,800, and it would be charged to the New York office; there would be no entries made in the company's books and it would be put on a tag or on an envelope; at the end of the year Mr. Tatham would enter a lump sum, for instance, one year it was \$9,176 and some cents. Some weight seems to be attached by counsel to the fact that Mr. Anderson [114] was led into this matter somewhat by the fact that Mr. Tatham was a director of the defendant. Now, I have shown that Mr. Tatham never attended any meetings in New York. I desire now for the purpose of clearing up this matter of showing just the manner in which Mr. Nones handled the funds of The Quicksilver Mining Company; in other words, the treasurer of the com-

(Testimony of J. F. Tatham.)

pany not only paid its funds for the purpose of organizing other corporations for the purpose of exercising its corporate powers, but that the treasurer likewise used its corporate funds for any purpose that Nones directed him to use them.

The COURT.—Doubtless Mr. Herrington will stipulate that those were the facts.

Mr. HERRINGTON.—That may be true or may not; they have brought no cross-complaint against my client to recover the moneys that were claimed were irregularly paid out. I cannot see how we are interested in that matter.

The COURT.—It seems to me that it would be as helpful to you as it would be to them. That is the way it appears to me.

Mr. HERRINGTON.—I will stipulate that what you state is correct; I think it is the truth.

Mr. JARMAN.—Q. Mr. Tatham, were you ever advised of any action taken by the Board of Directors in reference to the railroad company?

A. No, sir, I was not.

Mr. JARMAN.—Q. Did you ever advise Mr. Anderson, the plaintiff in this case, as to any action taken by the Board of Directors in reference to either the power company or the railroad company?

A. No, sir, I did not. [115]

I came to San Francisco for the purpose of making application for a loan on the company's land holdings in Santa Clara County. I applied to the Western States Life Insurance Company for the loan. I do not know whether I made the applica-

(Testimony of J. F. Tatham.)

tion in the name of The Quicksilver Mining Company; Mr. Nones, the president of the company instructed me to attend to this business. That is the only authority I had.

Q. Did you ever make any report to the directors of the company about this application for a loan?

A. No, sir, I did not.

Mr. Anderson presented me with a claim for \$4,500 against The Quicksilver Mining Company in May, 1913, just before my last trip to New York. I took it to the company's office in New York and handed it to Mr. Nones.

I think that Anderson presented me with a bill for this amount before that time but nothing was ever done with it. I think it was presented shortly after that note became due. That is my recollection, I would not say for sure. I received it and placed it on file in the company's office in New Almaden.

Q. Why didn't you send it on to New York, or why didn't you pay it?

A. I didn't send it on to New York because I usually paid bills from this end. Of course, I would have consulted about that bill. But I did not pay it because I did not have the funds.

Q. Did you ever include that item or this bill, which you claim has been presented to you, in the statement of liabilities which the company owed?

Mr. HARRINGTON.—That would not be binding upon the plaintiff, [116] whether he did, or not.

(Testimony of J. F. Tatham.)

Mr. JARMAN.—I am not seeking to bind the plaintiff; I am examining this witness now.

The COURT.—Of course, it might be a circumstance of greater or less degree to absolve the defendant from actual knowledge; it may not be worth much. The objection is overruled.

A. That I cannot say. The records will show that, the books of the company.

Mr. JARMAN.—Q. Now, Mr. Tatham, don't you know as a fact that you never did?

A. I would not say absolutely one way or the other.

Q. Don't you recollect an item of \$411 for expenses? A. I recollect the item, yes.

Q. And you recollect that you included that item in the supposed liabilities of The Quicksilver Mining Company, did you not?

A. I could not say whether I included it, or whether I did not at that time.

Q. Do you recollect having a conversation with Mr. Landers and myself at the office of The Quicksilver Mining Company some time in the latter part of April or the first part of May, 1913, with reference to the outstanding accounts?

A. I know I met you there on two or three different occasions; I could not say the date.

Q. Upon these occasions you furnished us with a statement of the outstanding liabilities of The Quicksilver Mining Company, did you not?

A. They were in the bills payable book there.

Q. In the bills payable book? A. Yes, sir.

(Testimony of J. F. Tatham.)

Q. Do you recollect discussing the claim of Mr. Anderson and [117] telling us about the \$411 claim?

A. Not separately from the other accounts; no, sir.

Q. Do you remember saying anything to us about the claim that Mr. Anderson had against Mr. Nones for \$4,500? A. No, sir, I do not.

Q. What is that?

A. I don't remember saying such a thing, no, sir.

Q. Do you deny saying it?

A. No, sir, I don't deny saying it; I don't remember whether I did or not. I might have told you that the note which Mr. Nones gave Mr. Anderson was signed personally, or something to that effect.

Q. Do you recollect telling us that Mr. Anderson had a note or memorandum signed by Mr. Nones personally?

A. Well, I don't recollect saying it, no, sir.

Q. You don't remember that?

A. No, sir; I might have said it.

Q. When you received claims against the company, do you make any entries on the books or in the statements—when you were acting as the treasurer?

The Southern Pacific Company has a branch line to New Almaden with a terminal approximately 3 miles from the Hacienda. It is comparatively level from the production works to the railroad. This branch line has been there for a good many years and is still being operated.

Q. Do you know the capital stock of the defendant? A. Yes, sir.

(Testimony of J. F. Tatham.)

Q. Do you know that all the shares have been issued and outstanding?

A. Yes—I don't know absolutely, I have heard so. I never saw the books. [118]

Mr. JARMAN.—Mr. Herrington, will you stipulate that the capital stock of the company is 100,000 shares? It is a ten-million dollar corporation, and that all the stock is issued and outstanding. Any objection to stipulating to that?

Mr. HERRINGTON.—I don't know a thing about it, Mr. Jarman.

Mr. JARMAN.—That was proved in another matter. I know that to be a fact myself.

Mr. HERRINGTON.—I don't recollect of it ever having been proved to my knowledge before and I don't know anything about the capital stock or its issuance.

Mr. JARMAN.—The only reason I ask that is that I am the only witness in California who knows that fact, and I do not want to be sworn to testify to a fact. Mr. Nichol, the only other witness who knows it broke his hip at the Bohemian Club Jinks a short time ago and he is now in the hospital. I can verify that for you, Mr. Herrington.

Mr. HERRINGTON.—I am perfectly willing to so stipulate that you will testify and that Mr. Nichol will so testify, but the testimony is objected to upon the ground that it is immaterial.

The COURT.—What is the purpose of it?

Mr. JARMAN.—The purpose of it is in conjunction with the Minutes which have been introduced in

evidence here showing that all the stockholders were not represented at certain meetings and to show what was necessary for a quorum, as appearing on the face of the Minute Book introduced in evidence in this case.

The COURT.—Do you mean that there was not a quorum present at the meeting of the stockholders?
[119]

Mr. JARMAN.—At one meeting there was not a quorum present.

The COURT.—What difference would that make as against this plaintiff?

Mr. JARMAN.—Some mention was made there as to the alleged ratification of the acts. That is only incidental to the matter. The main point is this: a different rule of law prevails where an act which an officer of a corporation or a Board of Directors has no power to do under its charter and where all the stockholders do not assent to it; now, in this case if they attempt to bring themselves within that doctrine of ratification by the stockholders I want to show and the records do show that the acts of Mr. Nones in reference to this plaintiff, are in any event even if they were known by those who did ratify them, was not a ratification by all the stockholders of the corporation. That is the sole purpose.

The COURT.—Well, there may be something to that, I don't know; objection overruled. It is harmless anyhow.

Mr. JARMAN.—That is all.

(Testimony of J. F. Tatham.)

Redirect Examination.

The branch line of the Southern Pacific Railroad is about 4 miles from the Senator shaft. I think that the freight rate on quicksilver from Almaden Station to San Jose was eight cents a hundred. The freight rate from San Jose to San Francisco is seven cents per hundred, a distance of 50 miles. They ran trains over this branch line at various times. At one time it ran twice a week and then once a week. I think it is back to twice a week now, I am not certain though.
[120]

Recross-examination.

My testimony about the freight rate per hundred pounds was in reference to quicksilver in flasks. During the time when I was in the employ of the company they shipped about an average of 200 flasks a month. A flask contains 75 pounds of metal and the total weight of the flask and the quicksilver is 88 pounds.

Testimony of Emory E. Smith, for Plaintiff.

EMORY E. SMITH, called as a witness for the plaintiff, testified as follows:

I am a chemical engineer residing in San Francisco; a member of the firm of Smith, Emory & Company. I have been in business about 15 years. Our firm was called upon to examine the mineral material at what is known as the New Almaden Mine with reference to its adaptability to manufacturing metallic paint.

Q. What was the result of that chemical examination as to whether or not it was feasible to manu-

(Testimony of Emory E. Smith.)

facture such metallic paint?

Mr. JARMAN.—We object to the question as immaterial, irrelevant and incompetent.

The COURT.—What is the purpose of this?

Mr. HERRINGTON.—It is along the same line, if your Honor please, that I suggested some time back. Your Honor, I think, sustained the objection. It is for the purpose of showing that for the carrying out of the enterprise and utilizing the slag on this mining property it was essential to have a railroad.

The COURT.—The objection is sustained as immaterial. [121]

The COURT.—Is it for the purpose of showing that this was forwarded to the corporation and acted upon and brought home to the attention of the corporation in some way?

Mr. HERRINGTON.—No.

The COURT.—The objection is sustained as immaterial.

Mr. HERRINGTON.—Q. Did you or your firm make any surveys or maps or plans for a dam or dam site for The Quicksilver Mining Company upon any line of water or stream or creek there?

A. We did.

Q. Approximately when was that, as nearly as you can state?

A. 1912, I think, or 1913, or along about that time.

Q. Did your firm have anything to do with negotiating the sale of the water rights of The Quicksilver Mining Company?

Mr. JARMAN.—I object to that as immaterial,

irrelevant and incompetent; I cannot see the purpose of it.

The COURT.—I thought there was some testimony this morning with respect to a projected sale of the property there and which was never brought home to the corporation in any way at all.

Mr. HERRINGTON.—I cannot say that knowledge of the matter was brought home to the defendant.

The COURT.—I remember now that I came to the conclusion that it was immaterial and I am still inclined to adhere to that ruling. The objection is sustained.

Mr. HERRINGTON.—The corporation, however, had instructed that it be sold; that was done by resolution. You don't deny that, do you? This was simply carrying out the instructions of the corporation.

The COURT.—Let us understand about that; I didn't understand that. Is this in any wise connected with the plaintiff's services, this sale?

Mr. HERRINGTON.—Not this sale, no.

The COURT.—That is what I thought. It is entirely foreign to any claim made by the plaintiff in this case?

Mr. HERRINGTON.—Oh, yes, he had nothing to do with negotiating [122] the sale.

The COURT.—And did nothing pursuant to the resolution of the Board of Directors that the property be sold?

Mr. HERRINGTON.—No, nothing whatever.

Mr. HERRINGTON.—That is all.

Testimony of Charles Herrmann, for Plaintiff.

CHARLES HERRMANN, called as a witness for the plaintiff, testified as follows:

I am a surveyor and civil engineer and as such surveyed the right of way for the San Jose and Almaden Railroad Company. I was paid for my services by The Quicksilver Mining Company. The last payment was made to me on January 14, 1914, and amounted to \$407.50.

Cross-examination.

Mr. JARMAN.—Q. Will you tell the Court how you happened to come to get that last payment, who arranged it for you?

A. Mr. Jarman here is the man. If it had not been for Mr. Jarman I would not have got the money, I guess. I had been waiting a long time for my money and I could not get it and I threatened to sue the company.

Mr. JARMAN.—It will have to be explained, your Honor.

My bill for services for surveying for the railroad company was nearly \$1,000. I was paid by check signed by The Quicksilver Mining Company, delivered to me by Mr. Tatham. My testimony that I was paid by the Quicksilver Mining Company is based solely upon the fact that I received the check of The Quicksilver Mining Company in payment of my bill. I do not know whether the [123] company itself authorized the payment of the money that was paid to me.

The COURT.—Q. I understood you to say that the

(Testimony of Charles Herrmann.)

check you got in January, 1914, came from the New York office? A. It did.

Mr. JARMAN.—That is true.

The COURT.—Q. For what services was that check in payment?

A. The final payment for the survey of the railroad.

Q. When did you render those services for which this check was given in payment?

A. From August 7, 1911, up to January 13, 1913.

Q. This was the final payment, was it, for those services? A. It was the final payment.

Q. What did you receive all told?

A. Several payments, which I have here. I got a payment on account, the first payment on account, of \$200 on September 19th, I think it was, 1911.

Q. What was that for?

A. A payment on account.

Q. For services in surveying the line of railroad?

A. Yes, sir.

Q. Did your voucher show what the services were?

A. My agreement—

Q. (Intg.) Did the voucher you gave to the company show the services for which the payment was made?

A. I rendered the company my bill and they made me a payment on account.

Q. What did your bill state, what was on your bill?

A. My bill was so many days at \$20 a day, which was my agreement.

Q. For what?

(Testimony of Charles Herrmann.)

Q. For surveying and locating the railroad from San Jose to Almaden. [124]

Q. That is what your bill said? A. Yes, sir.

Q. Who did you give that to?

A. I gave that to Mr. Tatham or sent it by mail to Mr. Tatham.

Q. That was at San Jose; and you got your money from him? A. Yes, sir.

Q. A check made and signed by him?

A. By The Quicksilver Mining Company.

On March 22d, 1912, I received a check on account for \$292.50 on October 7, 1912, I received a check for \$72; on January 14, 1914, I received a check for \$407.50; that was all for railroad work.

I have been engaged in surveying in San Jose for many years and in my office have very complete records of the lands of Santa Clara County and of the lands owned by The Quicksilver Mining Company. I have done surveying of the company's lands at New Almaden.

Q. And there is more work to be done there now, or in the future, is there not, that you are aware of?

A. Yes, I expect so. [125]

The depositions of the witnesses, Alfred H. Swayne, C. F. Tracy, Charles A. Nones and Margaret Bowe, heretofore referred to, taken upon commission duly issued out of this court, introduced in evidence by plaintiff, together with such portions of the exhibits therein referred to as are relevant to this inquiry, are as follows:

Deposition of Alfred H. Swayne, for Defendant.

ALFRED H. SWAYNE, called as a witness on behalf of the defendant, and being duly sworn by the commissioner, testified as follows:

Direct Examination by Mr. HARBY.

I am a lawyer and broker; I am not now a director of the Quicksilver Mining Company; I resigned, I should think, a month or six weeks ago (a month or six weeks prior to January 19, 1915), and prior to that I was a director continuously from June, 1909. I was a director continuously from June, 1909, when I was elected, to the date of my resignation. I was elected a director at the same time Mr. Nones was made president of the company; I was in Europe at the time. He was president of the company during the time I was director down to June, 1913, continuously, and was a member of the Board of Directors throughout.

Q. Did you know Mr. C. P. Anderson, the plaintiff in this action? A. No.

Q. You have never seen him? A. No.

Q. Did you ever know of him?

A. Never heard of him until this case began. I have no recollection of his name being brought before the Board in any connection whatever while I was a member of the Board. I cannot remember any reference made to any dealings with him [126] while I was a director of the company; that is, no reference was made before the Board. I have no recollection of Mr. Anderson's name ever being mentioned before the Board of Directors while I was

(Deposition of Alfred H. Swayne.)

a member of it, or any question of his employment ever having been discussed. I have examined the minute-book of the company; the minutes were always read. Whenever a meeting was held, the minutes of the preceding meeting were read. In these minutes I did not see any of them that I recall as not expressing anything that was had at the meeting, or as failing to express whatever was had at the meeting.

Mr. HARBY.—I ask to have this book, purporting to be a minute-book of the Quicksilver Mining Company, marked for identification.

(The book just offered for identification was marked “Defendant’s Ex. 1 for identification, Jan. 19/15.”)

Q. I show you page 332 of Defendant’s Ex. 1 for identification, purporting to be one of the minute-books of The Quicksilver Mining Company, and call your attention to what purports to have been the annual meeting of the stockholders of The Quicksilver Mining Company held on June 21, 1911, and the paragraph thereof reading as follows: “The Chairman read the annual report of Mr. J. F. Tatham, Treasurer & General Manager, and also of the President, and on motion of Mr. Hollinger, seconded by Mr. Velso, all acts of the officers and directors of the Quicksilver Mining Company during the past year were ratified and confirmed.” Do you remember that resolution being passed? A. Yes.

Q. When that resolution was passed, were the acts of the officers and directors of the Quicksilver

(Deposition of Alfred H. Swayne.)

Mining Company brought to the attention of those present, or was the resolution [127] passed without their being brought to their attention?

A. My recollection is that the resolution was passed without their being brought to the attention of the stockholders.

Q. Was anything done other than to pass the resolution? A. Not that I remember.

Q. I show you page 350 of the same exhibit for identification where a record of the annual meeting of the stockholders of The Quicksilver Mining Company held on June 19, 1912, purports to be set forth, and call your attention to the following "The Chairman read the annual report of Mr. J. F. Tatham, treasurer and general manager, and also of the president; and on motion all acts of the officers and directors of The Quicksilver Mining Co. during the past year were ratified and confirmed," that paragraph appearing at the top of page 351. When that resolution was passed, you were, of course, present at the meeting? A. Yes.

Q. When that resolution was passed, was anything done other than to pass the resolution?

A. Not that I remember.

Q. Were the acts of the officers or directors of The Quicksilver Mining Company during the past year called to the attention of those present?

A. No.

Mr. HARBY.—I offer in evidence a printed book endorsed "Annual Report, Quicksilver Mining Company, 1909-1910."

(Deposition of Alfred H. Swayne.)

(The book just offered in evidence was marked "Defts. Ex. 2, Jany. 19/15.")

IT IS CONCEDED that this is the genuine report of the company covering the time stated.

Q. I show you what purports to be the printed annual report [128] of the company for the years 1910-1911, taken from the files of the company and produced by the present secretary; is that the report that was prepared and issued by the company (handing the same to the witness)?

A. I think it is.

Mr. HARBY.—I offer that in evidence.

(The book just offered in evidence was marked "Defts. Ex. 3, Jany. 19/15.")

Q. I show you also a printed report produced by the present secretary, endorsed "Report, The Quicksilver Mining Company, April 30th-Dec. 31st, 1911," and ask you if that is a report that was issued by the president of the company at the time stated (handing the same to the witness)? A. Yes.

Mr. HARBY.—I offer that in evidence.

(The book just offered in evidence was marked "Defts. Ex. 4, Jany. 19/15.")

Q. I show you also a printed book produced by the present secretary, endorsed "Annual Report, The Quicksilver Mining Company, 1912," and ask you if that is the annual report that was issued by the company, the first part being signed by Charles A. Nones as president, and part of it signed by J. F. Tatham as treasurer (handing the same to the witness)? A. Yes.

(Deposition of Alfred H. Swayne.)

Mr. HARBY.—I offer that in evidence.

(The book just offered in evidence was marked “Defts. Ex. 5, Jany. 19/15.”)

Q. Mr. Swayne, you were present at a meeting of stockholders of The Quicksilver Mining Company held at the office of the company, No. 45 Broadway, New York, on February 15, 1913, were you not?

A. Yes. [129]

Q. I show you a printed report of that meeting; have you heretofore examined that printed report (handing the same to the witness)?

A. Yes, I had a copy at the time.

Q. Is that an accurate report of the minutes of that meeting, purporting to have been taken by Willis Van Valkenburgh (handing the same to the witness)?

A. Yes, I think it is.

Cross-examination by Mr. MARSHALL.

I answered on direct examination that I had not heard of C. P. Anderson, the plaintiff in this suit, until this suit was instituted; that is true to the best of my recollection. The property of The Quicksilver Mining Company is located in California; at New Almaden, California, I believe. San Jose is the nearest city to where these properties are located, I believe; I have never visited the property.

Q. The furnaces and mining properties of the company are at New Almaden and the nearest shipping point is San Jose; is that correct?

A. Shipping point?

Q. The nearest railroad shipping point?

A. I don't understand so; I think there is a

(Deposition of Alfred H. Swayne.)

branch railroad near the works, a branch of the Southern Pacific somewhere near the works.

Q. Do you know anything about the water rights belonging to the defendant company?

A. Only what I have heard discussed from time to time among the directors.

Q. At board meetings?

A. Yes, I have never seen the property. [130]

Q. Did you ever hear discussed in a directors' meeting the proposition to construct an electric railway to extend from San Jose to New Almaden, where the works of the defendant company are located? A. Yes.

Q. You also heard discussed in directors' meetings the development of the water rights and water-powers owned by the company? A. Yes.

Q. And the object and purpose in the development of the company's water rights and power was to enable the company both to use its power to greater advantage and to sell power, wasn't it?

A. That was the plan.

Q. You knew that the project of an electric railway line to connect the works with the City of San Jose was a project initiated for the benefit of the defendant company, didn't you?

A. I knew that that plan was discussed; it was never authorized.

Q. Was it ever objected to? A. Yes, seriously.

Q. By whom?

A. By Mr. O'Brien, Mr. Stern and myself.

Q. Will you turn to the directors' minutes and

(Deposition of Alfred H. Swayne.)

show where such objection is written?

A. Yes, I will (referring to Ex. 1 for identification); on page 341 of the minute-book, Defendant's Ex. 1 for identification.

Q. Referring to page 346 of the minute-book, Defendant's Ex. 1 for identification, is it not the fact that the Board of Directors approved the action of the president of the company in this expenditure of some \$3,000 upon a right of way, surveys and cutting down grades for the San Jose and Almaden Railroad, the [131] stock of which was to be owned by The Quicksilver Mining Company; isn't that a fact? A. Yes.

Q. And at that meeting was there not a further resolution that the action of the president be approved in receiving the stock of the San Jose and Almaden road for the account of The Quicksilver Mining Company, the defendant in this action, for the full amount of expenses incurred? A. Yes.

I don't remember when the Almaden Stores Company was incorporated; it is all set out in the minute-book. I couldn't say of my own knowledge when it was incorporated; I have no knowledge. I would be able to determine only in general the date of incorporation of the Almaden Stores Company by reference to the minute-book; I have no personal knowledge of the incorporation of the Almaden Stores Company. I could not tell if I did turn to the minute-book whether it was the first mention of the company or not; I did not keep the minute-book.

(Deposition of Alfred H. Swayne.)

A. I cannot find that New Almaden Stores Company matter here.

Q. I notice on page 2 of the report of the president to the company dated May 14, 1912, that the president reported that the construction of a paint mill had been authorized by the directors with a capacity of 20 tons per day; that statement is in accordance with the facts, is it not? A. I believe so.

Q. On page 2 of the same report, being Defendant's Ex. 4, appears the following: "We were prevented from making a larger production for the eight months covered by this report on account of the lack of transportation facilities. This I expect to overcome, as this company has within the last few months obtained the necessary rights of way and franchises for an electric line, to be owned entirely by your company and which will extend from [132] San Jose to the town of New Almaden where the furnaces are located. By this means we will be able to save considerable cost in our transportation, and at the same time it will be possible for us to increase our hauling facilities, thereby also increasing our production. This proposed line will also transport passengers and express matter for the adjacent territory. Another benefit arising from construction of this line will be the opening up of our lands, most of which can be developed and sold at a far higher price than would be obtained were this road not in operation." That excerpt from the president's report is in accordance with the facts, is it not, as you understand them?

(Deposition of Alfred H. Swayne.)

A. That was read to the directors; I won't state it is in accordance with the facts.

It was submitted to the directors before it was submitted to the stockholders and it was submitted to the stockholders as a printed pamphlet on or about this date.

Q. Did you ever object to it to the stockholders or at the time as not being in accordance with the facts?

A. No, but the results of the reading of that report was the passage of that resolution authorizing the expenditure of \$3,000 for the full expense.

Q. But that resolution which you refer to in the minute-book was subsequent, was it not, to this report? A. What is the date of that report?

Q. May 14, 1912.

A. This resolution was passed as the result of the reading of that report to the directors and limiting the president to a total expenditure of \$3,000 for all expense connected with the items mentioned in that report. [133]

Q. When was the report printed?

A. I do not know; my recollection is that the printed report was submitted to the directors, but it may have been read in typewritten form and printed subsequently for distribution to the stockholders; I don't remember about that.

Q. How do you explain that the minutes which you say limit the expenditure to \$3,000 are minutes of a meeting of May 1st and the president's report which you say was read to the directors is dated May 14th?

(Deposition of Alfred H. Swayne.)

A. The president's report was finished subsequently for distribution to the stockholders, but was submitted to the directors, as I remember, at this meeting of May 1st.

As far as I know the report dated May 14th went forward to all the stockholders of the company.

Q. Did you send any explanation of any kind to them or did other directors of the company send any statement or notice of any kind to the stockholders that the report of May 14th did not accord with the facts?

A. No, I still think it did accord with the facts. This resolution covers it and said \$3,000 is the total amount authorized for that purpose.

Q. Now, in that same report occurs the following: "I also beg to report that negotiations are now pending for the sale of the water rights belonging to this company, at a price that will give this company a large working capital for whatever future developments may be contemplated." Were such negotiations pending at the time of that report?

A. It was so stated in the directors' meeting; I do not know whether they were pending or not, of my own knowledge. [134]

Q. Do you know the name of the company with which negotiations were pending? A. No, sir.

Q. I call your attention to the minutes of a special meeting of the Board of Directors held on March 18, 1912, page 345 of the minute-book, as follows: "On motion of Mr. Swayne, duly seconded, the resolution adopted by the Board of Directors at a special meet-

(Deposition of Alfred H. Swayne.)

ing held at the Company's office, No. 45 Broadway, New York, on Sept. 20th, 1911, regarding the sale of the Company's water rights was rescinded at to-day's meeting, and on motion of Mr. Whicher, and seconded by Mr. Swayne, the following resolution was adopted in its place.

"Resolved that the officers of the Company be authorized to transfer to Senonac Power Company, all the water rights owned by the Quicksilver Mining Company, together with a lease of the pipes of the county of Santa Clara. Said lease being for a term of fifty (50) years, and in exchange therefore to receive all stock and other securities of the Senonac Power Company, and the President is therefore authorized to sell and transfer these securities at a price of not less than Two Hundred Thousand Dollars (\$200,000.00) in cash or its equivalent, reserving, however, to The Quicksilver Mining Company the right for all power to carry on its business now and in the future, and for not less than 200,000 gallons of water per day." Is that correct?

A. Yes.

Q. As I understand it, the transfer provided for in that resolution was never actually carried out?

A. I don't know about that; I think it was; that company was merely a subsidiary of The Quicksilver Mining Company; I believe it was organized and the transfer made and subsequently it was dissolved.

[135]

Q. Is there any question, Mr. Swayne, on your part of the authority of Mr. Nones to organize the

(Deposition of Alfred H. Swayne.)

Senonac Power Company now that you have read that resolution?

A. I prefer not to express an opinion on that point; the resolution speaks for itself.

Mr. MARSHALL.—Mr. Harby, will you produce the cash-book of the defendant company covering the fiscal year 1911 and 1912?

Mr. HARBY.—Counsel for the defendant replies that such book is in California and not in New York, probably at the company's works in New Almaden.

Redirect Examination by Mr. HARBY.

Q. Mr. Swayne, you were questioned with regard to a resolution appearing at page 341 of Defendant's Ex. 1, for identification, being the minute-book of The Quicksilver Mining Company, referring to an electric road, where it is reported that Mr. O'Brien stated that he knew a competent engineer who could furnish such report. Was this engineer referred to by Mr. O'Brien retained by the company? A. Not that I ever heard of.

Q. Did Mr. O'Brien resign after that?

A. Shortly after that, yes, sir.

Q. Was any reason stated by him before the board as to why he resigned?

A. Not before the board.

Q. You were also asked with reference to a resolution at page 346 of said Defendants Ex. 1 for identification, where it is reported that the president's action in ordering the sum of approximately \$3,000 to be charged to March expenses be approved, [136] said sum representing the amount of money

(Deposition of Alfred H. Swayne)

actually expended upon rights of way, surveys and cutting down grade for the proposed San Jose and Almaden Road; was ever any resolution passed at any time authorizing any additional sum to be expended upon rights of way, surveys and cutting down grades for any proposed road on behalf of The Quicksilver Mining Company?

A. No. I made a statement that I had never heard of Mr. Anderson; I find in looking over the minutes of the Company that his name had been mentioned in connection with the Stores Company, but I had never heard of him in connection with the electric railroad or water-power.

Deposition of Charles F. Tracy, for Defendant.

CHARLES F. TRACY, called as a witness on behalf of the defendant, and being duly sworn by the commissioner, testified as follows:

Direct Examination by Mr. HARBY.

I am the secretary of the defendant, The Quicksilver Mining Company. Defendant's Ex. 1 for identification is the minute-book of The Quicksilver Mining Company covering the period from November 12, 1890, to July 10, 1912. That book is one of the official records of The Quicksilver Mining Company, in my possession, and I have produced it from the office of the Company. I have also produced the Charter and By-Laws (handed to the witness).

Mr. HARBY.—I offer it in evidence.

(The paper just shown the witness was marked Defts. Ex. 6, Jan. 19/15.") [137]

(Testimony of Charles F. Tracy.)

Cross-examination by Mr. MARSHALL.

Q. Mr. Tracy, have you produced any of the financial books of the defendant corporation covering the past four years, preceding June, 1913?

A. I produced those statements.

Q. I am referring to the financial books of the corporation, not printed pamphlets circulated for the benefit of the stockholders.

A. I have produced no books.

Q. The period concerning which I am interested is from January 1, 1909, to May, 1912.

A. No, I have no books; Mr. Nones or Miss Bowe did not leave any books or any vouchers in the safe of The Quicksilver Mining Company.

Q. Do you know the present whereabouts of such books?

A. I do not; I wrote a letter to Miss Bowe demanding the vouchers and books, but never got any answer.

Q. Is that the only effort you made to obtain them?

A. Yes.

Deposition of Charles A. Nones, for Defendant.

CHARLES A. NONES, called as a witness on behalf of the defendant, and being duly sworn by the Commissioner, testified as follows:

Direct Examination by Mr. HARBY.

I think I was president of The Quicksilver Mining Company five years,—from June, 1909, to June, 1913. I reside in New York. I am able to identify the book which you have handed me—Ex. 1 for identification—as the minute-book covering the period in the book;

(Deposition of Charles A. Nones.)

it goes to 1912. It is [138] up to 1912; it is not up to 1913. I recognize it as the minute-book of the Company covering the period from the date appearing on the first page of the book up to 1912.

Mr. HARBY.—I offer it in evidence.

I know Mr. Anderson, the plaintiff in this action.

Q. Are you aware of the suit that he has commenced against The Quicksilver Mining Company?

A. I am not.

Q. I show you the copy of the complaint; will you read it (handing the same to the witness)?

A. I would like to (reading the same).

Q. You have read the complaint? A. I have.

Q. Before I take that up I want to show you the printed reports that have been produced here, marked Defendants' Exhibits 2, 3, 4 and 5, and ask if you recognize them as being what they purport to be (handing the same to the witness)? A. Yes.

Q. They were reports issued by you as president of the company? A. Yes.

Exhibit 6, which is shown me, purporting to be a copy of the Charter and By-Laws, produced from the office of the company has been changed, as you will find in the minute-book. There have been amendments. To the best of my knowledge and belief those by-laws are accurate as set forth in the pamphlet shown me, with the exception of the amendments appearing in the minute-book.

Q. Referring to this complaint, did you ask Mr. Anderson to organize a corporation for you?

A. Which corporation?

(Deposition of Charles A. Nones.)

Q. Any corporation, for you?

A. Not that I remember; no, sir.

Q. Did you ever ask him to organize any corporation at all? [139]

A. I don't think so.

Q. Did you ever ask Mr. Anderson to carry on the business of any corporation for you? A. No, sir.

Q. Did you ever ask him to carry on the business of any corporation anywhere? A. No, sir.

Q. Did you ask Mr. Anderson to secure options for the purchase of property for a railroad for you?

A. Yes.

Q. Did you ask him to secure options for the purchase of rights of way for you for a road?

A. I did.

Q. Did you ask him to secure options for the purchase of property and options for the purchase of water rights and rights of way for you?

A. Yes; for me personally, not for the company.

Q. Did Mr. Anderson accept this employment from you personally? A. Yes.

Q. Did you have any agreement with Mr. Anderson with respect to his compensation?

A. I gave Mr. Anderson a letter stating that he would be entitled to the sum of \$4,500 upon the completion of the railroad for the work which he had performed, and was about to perform, and that was signed by me personally.

Q. You did not give that to him on behalf of the company? A. I did not, sir; I was not authorized.

Q. Was any resolution of the Board of Directors

(Deposition of Charles A. Nones.)

of the company passed purporting to require you to employ Mr. Anderson for any purpose?

A. I am not quite sure, but I think you will find in the minutes authorizations to employ C. P. Anderson to sell some real estate; I believe you will find it in the minutes.

Q. Any real estate that had any connection with the railroad of water-power?

A. I don't think so, but I will not answer [140] positively.

Q. Whatever resolutions were passed by the Board of Directors authorizing you to employ Mr. Anderson are contained in the minute-book, Defendant's Ex. 1 for identification, are they not? A. Yes.

Q. Were there any resolutions of the Board of Directors authorizing you to employ him that are not contained in that minute-book? A. No, sir.

Q. Did you ever say to Mr. Anderson that compensation for his services rendered to The Quick-silver Mining Company should be fixed and determined at a period of time when the work to be done by him under the employment of the company was substantially completed?

A. I did not make any such statement.

Q. Did you ever write any such thing to him?

A. The letter which I have written and which I have given you the gist of was signed by me personally, and I would like to explain the cause of the letter and why it was written.

Q. Mr. Nones, you will please give the explanation you have in mind.

(Deposition of Charles A. Nones.)

A. Mr. Anderson purchased for the railroad company certain rights of way, and it is my belief that upon every right of way that he purchased he received a commission, paid by the railroad company for his services, but he was at some work and trouble in getting consents from property owners along the line. He received his expenses for these, and, in addition to these, received a cash bonus which was deposited in bank, to be paid over to the railroad upon its completion of \$4,500. This \$4,500 was a like amount of \$4,500 that I agreed to give Mr. Anderson personally, feeling sure that the Board of Directors, when I placed it before that Board, would sanction the payment to him [141] of \$4,500, but he had no obligation from the company.

Q. What bank was that \$4,500 deposited in?

A. I think it was deposited with either the First National Bank of San Jose or the—our attorney out there can tell you, Mr. David Burnett.

Q. Do you know who made the deposit?

A. Seven or eight or ten people.

Q. He purchased for the purpose of having it conveyed to the railroad company?

A. Yes; I think so; that was done under the supervision of Mr. Burnett. Mr. Burnett was, I think, president of the railroad company; he was made president so he could attend to matters out there.

Q. I believe you said that all agreements you made with Mr. Anderson were made by you, acting personally, with him? A. On account of the railroad?

Q. For anything.

(Deposition of Charles A. Nones.)

A. No, I must have misunderstood you, because Mr. Anderson received a commission on the sale of some lands belonging to the company.

Q. With that exception?

A. With that exception, yes.

Q. Did you ever state to Mr. Anderson that The Quicksilver Mining Company had purchased and had had delivered to it all steel rails, railroad ties and other equipment necessary for the construction and completion of any railroad? A. No.

Q. Or any statement to that effect? A. Never.

Q. Wholly or partly? A. Never.

Q. Did you ever state to Mr. Anderson that a railroad now named the San Jose & Almaden Railroad Company would be [142] fully constructed within ninety days from March 5, 1912? A. Never.

Q. Or anything to that effect, wholly or partly?

A. Never.

Q. Did you ever state to Mr. Anderson that the San Jose & Almaden Railroad Company would be constructed within ninety days from March 5, 1912, and that upon the construction of that railroad The Quicksilver Mining Company would pay Mr. Anderson for any moneys laid out by him? A. No.

Q. Or wholly or partly to that effect?

A. Never.

Q. Did you ever state to Mr. Anderson that at said time the amount and reasonable value to be paid to him for any services rendered to The Quicksilver Mining Company would be fixed and the amount of expenditures so made by him would be fixed and

(Deposition of Charles A. Nones.)

settled and would be paid, together with the amount and reasonable value of all services rendered by him?

A. I think that my answer to the \$4,500 covers that, Mr. Harby.

Q. I understood you to say that \$4,500 was paid to him? A. No, it was not paid to him.

Q. It was to be paid?

A. Yes, he had my personal letter, and it was my intention to bring the matter up before the Board of Directors and then explaining matters to them and allowing them to pay Mr. Anderson the \$4,500 out of the \$4,500 on deposit to the credit of the Railroad Company in San Jose.

Q. That is, you hoped to obtain the authorization from The Quicksilver Mining Company to pay Mr. Anderson the amount for which you personally obligated yourself?

A. That is correct, yes, Mr. Harby.

Q. Did you ever fix the amount and value of the services [143] that Mr. Anderson rendered to you?

A. No; I fixed it at \$4,500 arbitrarily, that being the amount of cash on deposit voted as a cash subsidy.

Q. Did you ever tell Mr. Anderson that he had rendered any services to The Quicksilver Mining Company? A. I don't think so.

Q. Did you, on March 5, 1912, or at any time, tell Mr. Anderson that The Quicksilver Mining Company had purchased and had in its possession rails, ties and other materials and appliances for the construction of any railroad? A. No, never.

Q. Did you ever make any statement to Mr. Ander-

(Deposition of Charles A. Nones.)

son which you knew to be false for the purpose of deceiving and misrepresenting the truth to him and misleading him? A. No.

Q. Did Mr. Anderson say to you that he would render services in the matter of procuring rights of way and doing anything else for the railroad and would accept his pay at the time of the completion of the railroad out of the said bonus of \$4,500; was that the understanding?

A. That was the understanding.

Q. Where were your conferences with Mr. Anderson held? A. In San Jose and at the mine.

Q. Did you say to him that he would be paid for services to be rendered to you at any special time or upon any fixed event happening; when was he to receive the pay?

A. Upon the completion of the railroad, when the subsidy came due.

Q. You explained to him, then, did you not, that his pay depended upon the railroad being built?

A. Precisely. [144]

Q. What did you say to him with respect to when he would be paid?

A. Mr. Anderson was the person who received these subsidies amounting to \$4,500, approximately, and I think it was the full amount of \$4,500, but I really don't remember.

Q. What he received was an agreement to have subsidies to be paid?

A. He received the agreement from the different property owners along the line to pay subsidies, and

(Deposition of Charles A. Nones.)

they paid them into this bank, and I don't know which bank it was.

Q. It was deposited in bank conditionally?

A. Deposited in a bank in San Jose.

Q. Conditionally?

A. Conditionally, upon the completion of the railroad.

Q. Did you tell him in that connection when he was to be paid for these services?

A. Mr. Anderson had a letter from me stating that I would pay him \$4,500 upon the completion of the railroad, signed by me, not as president, but simply in person.

Q. Was there any other agreement between you?

A. None other.

Q. And Mr. Anderson accepted that letter?

A. That is the only agreement.

Q. You gave Mr. Anderson a promissory note for \$4,500; did you not?

A. I don't think so; I think it was an agreement.

Q. Did you ever give him a note of The Quicksilver Mining Company? A. Never.

Q. Was it ever your intention to give him any note of The Quicksilver Mining Company?

A. It was not.

Q. Have you in your possession now any written agreement [145] with Mr. Anderson which you can produce?

A. I believe I have a letter from Mr. Anderson at my home which will prove that this transaction was personal and not corporate.

(Deposition of Charles A. Nones.)

Q. Will you produce that at the next hearing; will you try to find that letter and produce it?

A. Yes; I will try to.

Q. Excepting as appears in the minute-book, Ex. 1 for identification, has any resolution ever been passed by the Board of Directors of The Quicksilver Mining Company assuming or authorizing the expenditure of any moneys for any railroad or water-power?

A. Excepting as stated in the minute-book?

Q. Yes. A. No.

Q. There is in the minute-book, Exhibit 1 a minute of a resolution introduced by Mr. Swayne on March 18, 1912.

A. I remember it, concerning the expenditure of \$3,000.

Q. No, it is authorizing some transfer to the Senonac Power Company?

A. The water rights, yes, to be sold.

Q. Was any transfer ever made?

A. Yes, it was.

Q. Were those securities of the Senonac Power Company issued for that transfer ever sold?

A. No.

Q. The resolution provides that they might be sold at a price not less than \$200,000, reserving certain rights to the company? A. Yes.

Q. They were never sold? A. Never sold.

Q. Now, did you pay Mr. Anderson any sums of money for any services rendered by him with respect to a railroad or water-power company?

(Deposition of Charles A. Nones.)

A. I am under the belief that Mr. Anderson received a commission on every purchase he made.

Q. Purchase of what?

A. Right of way. [146]

Q. Moneys were paid out for right of way?

A. I think he received a certain commission for his work, but I would not be positive, but he received his expense money.

Q. Did you pay out any money for rights of way?

A. Yes.

Q. About how much?

A. I couldn't tell you, sir; I think something over \$1,200.

Q. And you paid that out through Mr. Anderson?

A. Mr. Burnett O. K.'d the vouchers, and that was part of the \$3,000 that was authorized by the Board of Directors of The Quicksilver Mining Company; that was all included in that sum.

Q. Was that disbursed by Mr. Anderson, that \$3,000?

A. I couldn't tell you how it was disbursed; that was done under Mr. Burnett's direction.

Q. You paid the money to Mr. Burnett?

A. The Quicksilver Mining Company through Mr. Tatham and upon my O. K. paid the money to Mr. Burnett, as I remember it.

Q. Whether he had any dealings with Mr. Anderson personally you do not know?

A. How do you mean?

Q. As to whether he did anything with Mr. Anderson?
A. Whether he paid Mr. Anderson?

(Deposition of Charles A. Nones.)

Q. Yes.

A. I don't know. I don't know who paid Mr. Anderson, but I do know that Mr. Anderson was paid for his work in getting this right of way.

Q. How do you know that Mr. Anderson was paid for his work?

A. Because it came out of The Quicksilver Mining Company.

Q. That is, you have seen the accounts of The Quicksilver Mining Company where these disbursements were charged?

A. Yes, and I have seen Mr. Anderson's receipts for the moneys advanced. [147]

Q. Whereabouts did you see those?

A. In the records of the Almaden Railroad.

Q. In San Jose, California? A. Yes.

Q. So that what you have seen purported to be records of moneys paid to him by the New Almaden Railroad Company? A. Yes.

Cross-examination by Mr. BLANDY.

I was president of this Quicksilver Mining Company, I think, for a period of five years. My connection with the company ceased in June, 1913. I do not know whether the transactions covered by this litigation occurred in 1912 or not; I have not read the particulars; I do not remember whether it occurred in 1912 or 1913; I know it did not occur in 1913.

Q. You are no sure as to whether it was a year preceding 1912; is that what you have in mind?

A. Yes, sir.

(Deposition of Charles A. Nones.)

Q. If I understand your testimony, you say that the matters covered by Mr. Anderson's suit were matters for which you were personally responsible to him? A. Yes.

Q. And that they have no concern with the Quicksilver Mining Company? A. Yes, sir.

Q. I understand that you predicate that claim upon the circumstance that you wrote a letter to him which you have referred to in your direct testimony; is that right? A. That is correct; yes, sir.

Q. I have not seen that letter; have you a copy of it, Mr. Nones? A. No, sir. [148]

Q. And I understand also from the direct testimony that you received a reply to that letter from Mr. Anderson?

A. No, not from that letter; that letter was written out in California. The letter that I wrote Anderson was written in California; the letter that I referred to at the last examination was a letter that Mr. Anderson wrote me months afterwards in which he held me personally responsible.

I have not been able to find that letter as yet; I have made a search for it; I think it is at my home but I have been unable to find it as yet; I have searched my home fairly well; what I consider to be a reasonable search. I should not say it is lost; I think it is among my letters, but I have been unable to find it, having about possibly a thousand letters to go over. I shall pursue the hunt and will let you know at a given date whether I can find it or not.

Q. Now, Mr. Nones, if you employed Mr. Anderson

(Deposition of Charles A. Nones.)

to do this work for which he sued, why didn't you pay him? A. I was unable to pay.

Q. You mean inability? A. Inability, yes.

Q. Financial inability?

A. Yes, financial inability.

Q. Have you ever taken up with Mr. Anderson the question of your financial inability to pay him?

A. Mr. Anderson is acquainted with my financial inability through my attorneys.

Q. I did not ask you that, Mr. Nones; I do not want to be captious; I am going to ask you a few questions and I would like to have direct responses, and not any shading off.

(The last question was repeated to the witness.)

[149]

A. My attorneys have notified Mr. Anderson to that effect.

I have never had any personal conversations with him on the subject of my inability to pay this claim; I am not now connected with The Quicksilver Mining Company. During the time I was president, covering this period of five years, I was not engaged in any other business. I devoted myself to the interests of The Quicksilver Company. I was an active president; my office was at No. 45 Broadway; the staff there was myself, Miss Bowe and a small boy.

During that five years the officers were myself as president; Mr. Frank, vice-president; Miss Bowe, secretary, and during that time the treasurers were L. B. M. Haag, for a short time a young man whose

(Deposition of Charles A. Nones.)

name I cannot remember, and later on Mr. Tatham,— Mr. J. F. Tatham was general manager and treasurer. Mr. Tatham was in California; the offices previous to 45 Broadway were 42 Broadway, for about a year. Miss Bowe and myself occupied the suite of rooms at 42 Broadway and at 45 Broadway. Mr. Frank occasionally, and the office boy. During that five years there were eleven different directors; I would have to look up all the names to tell you who they were.

Q. When did you hold your annual election?

A. I believe it was the third Wednesday of each June.

The annual election was held at the Company's office in New York; those offices, 42 and 45 Broadway, were the locations for transacting the fiscal business of the corporation. The plant was located in Santa Clara County, near San Jose, in California. I was in the habit of making many visits out there. [150] I went on the company's business.

Q. Such as would arouse the interest of the president?

A. Whenever I considered it necessary I went out there on the company's business.

The company had offices out there at the mines and later on an office in the First National Bank Building, San Jose.

Q. The office at the mine, what was that, anything more than a mere shed for the foreman?

A. Oh, yes, very extensive offices.

Q. If you and the treasurer and secretary and

(Deposition of Charles A. Nones.)

office boy and all the rest of the clerical force were located down here at 42 and 45 Broadway, what need was there for these offices?

A. Well, the transactions of The Quicksilver Company necessitated a cashier out there, a man to make up the payrolls, to pay the men, to buy supplies. In fact the working part of The Quicksilver Company was in California; the clerical force, as you might term it, or the fiscal force, was in New York.

Q. Did you ever hold any directors' meetings out in California? A. No.

Q. This letter which you say you wrote to Mr. Anderson was written, if I am correctly advised, in the offices of the company out at the mine?

A. Yes, it was written in the company's offices on the company's stationery at the mine.

Q. Now, as I have never seen that letter and we do not seem able to put our fingers on it, can you give me its general purport from memory?

A. Yes.

Q. Do; start with the date if you can?

A. That I cannot; I do not remember the date.
[151]

Q. You can give us some approximation, can't you?

A. The letter stated that upon the completion of the San Jose & New Almaden Railroad and the receipt of \$4,500 that I would obligate myself to pay C. P. Anderson, or to see that he received the sum of \$4,500 for his services.

(Deposition of Charles A. Nones.)

Q. That is as near as you can come from recollection? A. Yes.

Q. To the contents of the letter? A. Yes.

Q. Well, I suppose it was addressed to Mr. Anderson, was it?

A. It was given by me to Mr. Anderson personally.

Q. Yes, but was it addressed to him? A. Yes.

Q. You spoke of \$4,500; is that the \$4,500 that is referred to in his complaint? A. Yes.

Q. Is that the only sum of money that was referred to in the letter?

A. That is the only sum of money that was referred to in the letter.

Q. I see running through the papers handed to me an item of \$411, as if for disbursements. Is that in any way associated with the \$4,500 referred to in your letter? A. I know nothing about that.

Q. Was it a substantial, well-established railroad, or was it a new thing, a spur to a main track?

A. It was a road to be built.

Q. To be built? A. Yes.

Q. In connection with The Quicksilver Company's works?

A. No, I would not say in connection with The Quicksilver Company, but The Quicksilver Company could have used it very advantageously.

Q. Whose conception was that, yours?

A. Mine. [152]

Q. Then you ought to know what you conceived it for, what was the purpose to which that road was to be put?

(Deposition of Charles A. Nones.)

A. You had not asked me that question before; you asked me to answer the question you put.

Q. Now, I have put a concrete question to you, haven't I?

A. To facilitate the moving of traffic and handling of our goods.

Q. When you say "our goods," you mean The Quicksilver? A. Yes.

Q. It was a species of aid to the company's business purposes, wasn't it? A. It was,

Q. And I think you have stated—and if you did not somebody has, I think—that all the stock of the railroad was owned by The Quicksilver Company?

A. It was.

Q. So, isn't this a fair statement, Mr. Nones, that that was a piece of business enterprise to further the interests of The Quicksilver Company?

A. On whose part? You asked me whether it was a piece of business to further, on whose part?

Q. I have not asked that.

A. I cannot answer that question.

Q. Why?

A. Because it leads me too much in the dark.

Q. You said you conceived the project?

A. Yes.

Q. You were president of the company?

A. Yes.

Q. And you told us what its purpose was?

A. Yes.

Q. Surely a natural corollary to that would be that it was a piece of business enterprise to further the

(Deposition of Charles A. Nones.)

interests of The Quicksilver Company?

A. I have already testified to that, yes, sir. [153]

Q. All right. Now, having told us about the railway, I see running through the testimony some rights of way? A. Yes.

Q. Were they associated with the railway?

A. Yes.

Q. I also find an allusion made to some water rights? A. Yes.

Q. Were they associated with the railway?

A. No, sir.

Q. That was a new enterprise? A. Yes.

Q. Was that your conception also? A. Yes.

Q. That was also to further the best interests of The Quicksilver Company? A. Yes.

Q. Then you must have been a pretty active president? A. It seems so.

Q. You said that, didn't you?

A. I don't know how active I was.

Q. You devoted the whole of your time to the interests of The Quicksilver Mining Company?

A. Yes.

Q. Is Mr. Anderson a friend of yours?

A. Not at present, although I have nothing against Mr. Anderson.

Q. Well, having drawn a distinction between the present and the past, was he ever a friend of yours?

A. You asked me if he was a friend of mine; I say he is not but I have nothing against Mr. Anderson, but he has considerable against me; that is what I meant by my answer; you did not ask me if I was

(Deposition of Charles A. Nones.)

a friend of his; you asked me if he was a friend of mine; I draw that distinction.

Q. You have already told me that you made yourself the primary debtor to him in respect to this \$4,500, and you had not paid it because your financial situation would not permit it; were you ever sued for it? A. Never.

Q. Did you ever put it in the form of an obligation to Mr. Anderson? A. I have.

Q. In what shape? [154]

A. In my bankruptcy schedules in June, 1913.

Q. Then you have been adjudicated a bankrupt?

A. Yes.

Q. Voluntary bankruptcy? A. Involuntary.

Q. In the Southern District of New York?

A. Yes; I have been thrown into involuntary bankruptcy.

Q. Mr. Nones, you said that you had been thrown into bankruptcy; do you know enough about the bankruptcy procedure to know whether the court adjudicated you a bankrupt?

A. No, sir, I do not understand the word.

Q. You spoke about it and filed your schedules?

A. Yes. I think I have been adjudicated a bankrupt; I have been discharged; I quite recently applied for my discharge.

Q. Please tell me what you mean by saying that you had recognized your primary obligation as a debtor to Mr. Anderson by putting him in your schedules?

A. Because in this letter that I referred to Mr. An-

(Deposition of Charles A. Nones.)

derson had held me personally responsible for the sum of \$4,500.

Q. Are you referring to the letter you wrote or the letter he wrote?

A. To the letter he wrote me, which I have been unable to find as yet.

Q. Mr. Nones, are you not sufficiently familiar with business matters to know that the contraction of that obligation would be when you wrote your letter to Mr. Anderson and not Mr. Anderson's reply to you?

A. No, sir, it would be impossible to hold the company.

Q. I ask you that question?

A. I do not understand the question. (Question repeated to the witness.) [155]

A. Yes.

Q. So that we may understand each other, what I mean by that is this,—it would be your letter to him that would create the primary obligation from you to him, wouldn't it?

A. I should imagine that would be a matter for the courts to decide; I could not answer that question.

Q. You have attempted here to give your interpretation of the letter that you wrote? A. I have.

Q. And you have said that in that letter you have made yourself personally responsible to Mr. Anderson? A. I have.

The intent and purposes of the letter would create a personal obligation; I signed the letter in my individual name.

(Deposition of Charles A. Nones.)

Q. And that you did not put the designation "president" underneath? A. No, sir.

Q. Is it your idea that because you did not write the word "president" or print the word "president" after your name that therefore it is your personal obligation?

A. No, sir, but all the explanations were made to Mr. Anderson at the time.

Q. Now, we are dealing with the letter, Mr. Nones; you have told us in the most unqualified way that that letter from you to Anderson made you personally obligated to Mr. Anderson? A. Yes.

Q. And you supplement your statement that you personally obligated yourself to him by saying that you recognized that obligation in your schedules?

A. Yes.

Q. What did you do in your schedules to bear that out? [156]

A. I do not remember, Mr. Blandy; it is a matter of record.

Q. I know it is, and we are dealing with your memory?

A. I do not remember, Mr. Blandy; I know the statement in there is for work done in California, I think it is, but I am not sure.

Q. Well, that would be this same work, wouldn't it? A. It would.

Q. That we have been speaking of, this railway and the right of way and the water privileges, etc.

A. I do not think Mr. Anderson ever had anything to do with the water; not that I remember.

(Deposition of Charles A. Nones.)

Q. Anyway, so far as you are concerned, you did not put your personal obligation forward in respect to the water rights with him?

A. I never made any contract with Mr. Anderson concerning water rights; never had any understanding with him concerning water rights.

Q. So that the only contract you made with him would be in connection with the railway?

A. Precisely.

A. Now, coming back to the schedules, for I want to get on a footing of understanding with you in that respect, is it your best recollection that you put Anderson in as a creditor for \$4,500? A. It is.

Q. As if you owed him \$4,500? A. Yes.

Q. Did you swear to your schedules? A. I did.

Q. You intended to put nothing in your schedules except what was true? A. Precisely.

Q. You do intend, Mr. Nones, to be truthful in all your statements, don't you? A. I hope so. [157]

Not only to Mr. Anderson and to the court in my schedules but in all my dealings in connection with this Quicksilver business I have endeavored to make true statements. My bankruptcy schedules were prepared under the auspices of competent counsel; I first had Patrick Rooney, 111 Broadway, and later on Pressinger & Newcombe, 60 Wall Street. Patrick Rooney prepared the schedules and I have not the least doubt but what he is an intelligent gentleman of integrity.

Q. Now, tell us what you said in your schedules about this \$4,500 debt to Mr. Anderson.

(Deposition of Charles A. Nones.)

A. I believe I stated in the schedules for work done in California, services rendered in California; I do not remember the phraseology.

I gave the particulars to Mr. Rooney to enable him to prepare the schedules; I had no business interests in California outside of The Quicksilver Company.

Q. I want to be frank with you, Mr. Nones; I have put this question several times, so that I think your mind is centered upon just what I mean; I have asked you whether in connection with this \$4,500 transaction, you made yourself primarily liable to Mr. Anderson for it? A. Yes, answer yes.

I understand that you have emphasized the word "primarily" and what you mean by it.

Q. That is to say, that that was a transaction between two men, you on the one hand and Mr. Anderson on the other? A. Precisely, Mr. Blandy.

Q. Now, Mr. Nones, if I should remind you of the fact that in your schedules you swore that you were not primary debtor, what would you say? [158]

A. How do you mean?

Q. I mean what I said in that question?

A. What do you mean by primary debtor?

Q. That is the very question I have been emphasizing with you a moment ago; if I should tell you that in your schedules, which you swore to and said were prepared, that you stated you were not the primary debtor, what would you say

A. I would be very much surprised.

Q. You would be surprised? A. Yes.

Q. Then you look at your schedules?

(Deposition of Charles A. Nones.)

A. Then they have not been prepared the way I gave them.

Q. You said you gave Rooney instructions to draw them? A. Yes.

Q. And they were sworn to by you? A. Yes.

Q. And you knew what was in the schedules?

A. I did not read the schedules over after they were written; I did not read them.

Q. It is your duty .

A. I did not read them, no, sir; I did not. May I ask you a question, Mr. Blandy; isn't this claim of the \$4,500 in the schedules?

Q. Yes. A. That is all I know then.

I could not say without referring to the minute-book how often we had directors' meetings in the year 1912; I do not remember. I should say that long spells frequently happened when we were unable to get a quorum of our directors together.

Q. Well, the business interests of the corporation did not suffer on that account, did they?

A. No, sir [159]

Q. You were on hand? A. Yes.

Q. You knew all about the business? A. Yes.

Q. You are a practical man are you not; I mean by that that you are vested in the science of this quicksilver business? A. No, sir.

Q. What would call the person that is "Scienced" would you call him a chemist or engineer?

A. An engineer.

Q. And you do not claim to be an engineer?

(Deposition of Charles A. Nones.)

A. No, sir.

Q. But you had sufficient business dealings in connection with The Quicksilver Company to have acquired quite a considerable knowledge of the product of the mines?

A. I have quite considerable, yes, Mr. Blandy.

Q. Well, when you sent out your notices to the directors for a directors' meeting and your directors did not respond in sufficient numbers to constitute a quorum, did you assume to transact any directors' business in the absence of a quorum?

A. I do not think so, but I would have to refer to the minutes to answer that; I do not think so; I think it would be against the By-laws of the company.

Q. Wouldn't it be against the canons or common principles of the corporation to assume to transact business unless there was a quorum?

A. I would assume so, yes, Mr. Blandy.

When there was not a quorum about all that occurred and all that was practically done was to just have a little social gathering between a few of the directors. This occurred very frequently in these directors' meetings. It was no fault of mine that there was no quorum, the people didn't come. Notices were sent out regularly. These directors' meetings were designated to be had at stated places and at the date named in the by-laws. The majority of the directors lived in New York. A majority constituted a quorum. I think there were eleven on the Board of Directors; eleven was the [160] limit. A great many times the directors did not respond so

(Deposition of Charles A. Nones.)

as to make up a quorum and we simply adjourned. The company continued business, went right straight on.

Q. Then a quorum of the directors was not essential to the conduct of the business of the corporation, is that the idea?

A. No, sir, it is not the idea, because I think a quorum is essential at times.

Q. How did you manage to get along when you could not get the assent of your directors?

A. We had to postpone until the next meeting the same as any corporation.

Q. Meantime the corporation continued?

A. It went on the same as any corporation.

Q. Who ran it?

A. The different superintendents of divisions and the president.

Q. And the president?

A. And the president.

The corporation did not suffer because of the circumstances that there was not a quorum of the directors.

I have been out of the company since June, 1913; when I was in it it was in good condition, able to pay its debts; I do not know whether it is now. I was a stockholder in the company; I am not now. I sold my stock, transferred it a good many years ago. I was a stockholder during the time I was president. I think I had one hundred and odd shares. I do not think I had parted with those shares before my office as president expired; I think

(Deposition of Charles A. Nones.)

both about simultaneously, or I may have [161] parted with some; that is another matter I could not answer without investigating. I do not own any stock now; I disposed of it in the open market. I have no interest in the corporation now.

The company did not build a paint factory, nor did I; it was never built. It was thought of; it was a conception of mine. I believed it would prove beneficial to the company. Any of the projects that I conceived as president I thought would inure to the best interests of The Quicksilver Company, otherwise I should not have proposed them.

I cannot say that there was no quorum from the period beginning October, 1911, to March, 1912, a period of about six months; I do not remember any stated period at which there was no quorum. I know that [161½] there was no quorum several times but I have no special recollection of any stated period where there was no quorum; I cannot give the dates. I would not say that your data from October, 1911, to March, 1912, was incorrect.

Q. I notice, too, that in the minutes from time to time the president made his report to the directors, when there was a quorum present; you would be that president, wouldn't you? A. I would.

Q. Was your report usually in writing or was it a general *viva voce* statement?

A. It varied, at times it was in writing and at other times oral.

Q. Is the secretary here a shorthand writer (re-

(Deposition of Charles A. Nones.)

ferring to Miss Bowe)? A. Yes.

Q. I also notice a series of resolutions, the substance of which is a ratification by the directors of *ad interim* action of the officers; what officers were those resolutions designed to ratify?

A. I could not tell you according to the information you give me there, Mr. Blandy.

Q. Haven't you any recollection of there having been read into this reference a series of resolutions proposed by you and passed by the directors ratifying the action of the officers of the corporation during the period of the preceding quorum meeting of the directors?

A. I think that was done at all the meetings; it was not any special meeting when it was done; I think that was the custom.

Q. That was a custom established by you, wasn't it?

A. No, a custom established by the company, as I remember it, to my best knowledge and belief.

Q. Before you came in? A. Yes.

Q. You had had a president ahead of your period?
[162]

A. Oh, yes, the company is quite old.

Q. Who was your immediate predecessor?

A. Mr. Bailey.

Q. He was a man of parts? A. Yes.

Q. A man of business experience?

A. I could not tell you.

Q. You followed in his wake? A. Yes.

Q. So when you did succeed in getting your Board

(Deposition of Charles A. Nones.)

of Directors together, Mr. Nones, you intended to legalize whatever had been done by the officers during the interval, didn't you?

A. I do not think I understood your form of question, if you are putting this next question, suppose—

Q. It is beginning to shed some light on you, is it?

A. Possibly I am a rather dim person to shed light on, but I understood you to say that the meetings of the board were ratified at subsequent meetings, that is, at the subsequent meetings the previous meetings, the previous records of the minutes, were read and approved.

Q. That is one thing that would be about the first order of business? A. Yes.

Q. That is so in every corporation?

A. I think it is.

Q. Now, what I directed your attention to was the fact that after going through that formality, then the action of the officers in anything they may have done in the interval between the preceding directors' meeting and the meeting was ratified and approved?

A. I do not think it was ever done, Mr. Blandy.

Q. Well, it appears in evidence right in this reference, Mr. Nones? [163]

A. It may have been done in some special instances, but it was not the custom of the company.

Q. It was done under your auspices?

A. In some special instances, possibly.

Q. What do you mean by "special instances"?

(Deposition of Charles A. Nones.)

A. When a certain matter came up for the approval of the Board of Directors it would be customary to approve the action of the officers, but it was not, to my best knowledge and belief the custom of the company to approve at all meetings of the directors every action of its officers.

Q. You mean by that that if a resolution would be presented by you or anybody else to ratify the action of the officers in the interval between that meeting and the preceding one, that you would lay fully before the Board of Directors the particular business that had been transacted by the officers which you wanted them to ratify?

A. I most certainly do.

Q. Then if the secretary states to the contrary, would she be of fault?

A. I imagine one of us would be wrong.

Q. Supposing anybody else on this reference,—supposing Mr. Swayne said it was the universal custom not to lay before the directors the business that had been transacted, but to pass an omnibus resolution ratifying the action of the officers, would that be a correct statement?

A. I do not remember any such occurrence, Mr. Blandy.

Q. Well, then, do you assert the proposition that under your auspices as president, if a resolution was passed ratifying the action of the officers in the interval, that [164] the particular business or matter or business the officers had transacted would be laid before the directors for their consideration?

(Deposition of Charles A. Nones.)

A. To the best of my recollection and belief.

Q. The minutes would determine that?

A. They would.

I will stand by the minutes; I think I ordinarily dictated those minutes. I did not boss the whole thing; I was the president and as such had control of the company.

Q. You have seen this effusion issued under the auspices of H. F. Dollars and C. F. Tracy, purporting to be the minutes of the meeting of stockholders of The Quicksilver Mining Company held at the office of the company, 45 Broadway, on the 15th day of February, 1913, you have seen it, haven't you?

A. I have not read it, no, sir; I didn't pay enough attention to it to read it. [165]

Q. During that time were you not interested in the reproduction of the colloquy and the colloquies that took place between the disgruntled stockholders and yourself on that occasion?

A. No, Mr. Blandy, I was something like David Harum's flea-bitten dog; the fleas kept him so busy scratching that he didn't have time to think of his other troubles; I was something like that dog.

Q. David Harum says that fleas are good for a dog, doesn't he? A. I am not a dog.

Q. Well, there cannot be much doubt but that on the 15th of February, 1913, there was a special meeting of the stockholders held at 45 Broadway?

A. There is no doubt about that; that is undoubted.

Q. You called that meeting? A. I did.

(Deposition of Charles A. Nones.)

Q. You were in the chair?

A. I believe so, yes.

Q. Until you were ousted?

A. Until I was ousted.

Q. You have no recollection that a motion was put to remove you as president at that meeting?

A. I have a very vivid recollection of it.

Q. Have you any recollection of the fact that at the meeting several questions were put to you not only by Mr. Harby but also by different stockholders and you answered those questions?

A. I believe some questions were put; what the questions were I do not remember.

Q. There was considerable acrimony on that occasion? A. Almost.

Q. You were in a very unpleasant position?

A. Something like the dog? [166]

Q. Yes, sir, but you held your ground notwithstanding, didn't you? A. About ninety days.

Q. I mean so far as the meeting is concerned you asserted your rights as president and refused to recognize Mr. Harby's right?

A. I do not remember that I did.

Q. That is the best answer you can give me to that question? A. Yes.

Q. Now, Mr. Nones, this was a very acrimonious meeting; you were in the chair as president and the meeting had been called by you and turned into a meeting evidently in the interest of disaffected stockholders, and you mean to tell me that that has passed clean out of your mind?

(Deposition of Charles A. Nones.)

A. Absolutely, Mr. Blandy.

Q. Do you remember this question being put to you by Mr. Harby: "Mr. HARBY.—I would like to ask if the company obtained a charter for the building of a railroad? The CHAIRMAN.—No, sir. Mr. HARBY.—Was anything expended on account of obtaining a charter? The CHAIRMAN.—Yes, about \$3,500. Mr. HARBY.—I would like to ask you how that was expended? The CHAIRMAN.—That was expended under direction of counsel, Mr. Burnett, of Wilcox & Burnett, of San Jose. Mr. HARBY.—For what purpose? The CHAIRMAN.—For the purpose of obtaining rights of way for the New Almaden & San Jose Railroad, of which The Quicksilver Mining Company owns all the stock. Mr. HARBY.—This road you mentioned is an incorporated affair? The CHAIRMAN.—Yes. Mr. HARBY.—And the stock has been transferred to The Quicksilver Mining Company? The CHAIRMAN.—Yes, sir. Mr. HARBY.—But a franchise for the road has not been obtained? The CHAIRMAN.—It has, but not in the name of the Quicksilver Mining Company; in the name of the New Almaden [167] & San Jose Railroad Company." Do you remember that little colloquy between yourself and Mr. Harby?

A. I do not remember it, Mr. Blandy, but to my best knowledge and belief I confirm what I said in answer to those questions.

Q. In other words, while you do not remember the circumstances that that discussion took place be-

(Deposition of Charles A. Nones.)

tween yourself and Mr. Harby, you affirm the truth of the matter included in the discussion?

A. To my best knowledge and belief it is true.

Q. Reading further from this meeting of the 15th of February, on page 15: "Mr. HARBY.—Has anything been done towards the construction of the road? The CHAIRMAN.—Grades have been cut down. Mr. HARBY.—To what extent. The CHAIRMAN.—Possibly \$1,500, or \$2,000, has been spent; I cannot tell you exactly. A STOCKHOLDER.—I beg pardon—that question was, to what extent not what was spent. The CHAIRMAN.—To what extent—the heaviest part of the rock grades? The Same STOCKHOLDER.—I should imagine that the answer to that question should be—pardon me— The CHAIRMAN.—The percentage of the right of way is mostly over flat land; it has only been the heavy grades which have been cut down. Mr. HARBY.—Was it a mile or two miles? The CHAIRMAN.—No, I should say anywhere from a quarter of a mile to three-eighths of a mile of heavy grades. Mr. HARBY.—Did the directors authorize the expenditure of that \$3,500? The CHAIRMAN.—They did." Have you any recollection of that colloquy?

A. No recollection of it, Mr. Blandy.

Q. Is there anything in that that occurs to you as being untrue?

A. No, sir, the directors of the railroad authorized it.

Q. This inquisitorial examination of you by Mr.

(Deposition of Charles A. Nones.)

Conboy and others at that meeting, these individual stockholders as well— [168]

A. Mr. Conboy was my attorney.

Q. Well, questions were put by Mr. Conboy, also by Mr. Harby and by individual stockholders, which were designed to get information from you in respect to the expenditure of money of The Quicksilver Company; wasn't that the purpose of the series of questions put to you?

A. I assume so without acknowledging it.

Q. You as president were under fire?

A. I am not the first president that has been under fire.

Q. But you knew you were under fire, didn't you?

A. Certainly; I knew there was some disagreeableness.

Q. And they wanted information as to The Quicksilver Company's affairs; that is what they wanted, isn't it? A. I do not know what they wanted.

Q. The line of questions showed that, didn't it?

A. The line of questions showed that they wanted a great many things.

Q. Were you here when Mr. Swayne gave his testimony? A. Yes.

Q. Do you recall at this moment anything that Mr. Swayne swore to was false? A. No, sir.

Q. Now, just read and inwardly digest from your observation of that nice little sentence to which I have called your attention, and after you have read it, assuming that to be true, "I do not see that there is anything to do at this meeting except to see what

(Deposition of Charles A. Nones.)

the president has to say," if you made that statement and it is sworn to by Mr. Swayne that you did make that statement, and if that is true, weren't you asserting your own position as president in a most emphatic manner (handing to the witness the book from which the sentence just [169] quoted is taken) ?

A. Supposing we leave that to history; I do not know whether I did or not.

Q. Well, do you refuse to answer that question ?

A. Certainly I do.

Mr. BLANDY.—The minutes from which the last questions were read are offered by the plaintiff for identification. (Being the record of the minutes of the meeting of stockholders of February 15, 1913.)

The minutes just offered in evidence were marked Plaintiff's Exhibit 1 for Identification, February 24, 1915.

Q. Was there any season of the year when you made it a point of going to California ?

A. No, I went at all seasons.

Q. Have you any recollection whether the Board of Directors of your company approved your action as president in receiving the stock of this railroad company for the account of your company ?

A. No. I have no exact recollection of that.

Q. Why should this railway company turn the stock over to The Quicksilver Company ?

A. Because The Quicksilver Company were financing the railroad company, accepting the notes of the railroad company, for moneys received, or

(Deposition of Charles A. Nones.)

moneys given out, rather.

Q. Does that mean in plain English that The Quicksilver Company bore the expense of the railway company, constructing the railway?

A. It bore the expense. [170]

Q. But Mr. Nones, coming back again to the subject matter covered by this letter of yours to Anderson and your statement in answer to a series of questions by me that that was a primary obligation of yours to Mr. Anderson, have you any different answer to give?

A. Except that I do not understand the word "primary," possibly as you do.

Q. What is your understanding of the word "primary"? A. I understand it was "personal."

Q. Do you say now that this transaction of this \$4,500 was a personal, private obligation of yours to Mr. Anderson?

A. I say that the \$4,500 was the amount that Mr. Anderson claimed that I owed him and that my letter to Mr. Anderson was that I would be responsible for the \$4,500, but there was a reason for that.

Q. You have already stated on your direct that you employed Mr. Anderson to do this work; that you signed a letter with your own name to it, did not add to it the word "President," and that that was your debt?

A. Yes, and I will confirm it and I will double confirm it.

Redirect Examination by Mr. HARBY.

Q. Mr. Nones, you were just asked a question on

(Deposition of Charles A. Nones.)

cross-examination which you said you could not answer without explaining the matter in full, referring, I presume, to the Anderson matter; will you please make whatever explanation you have in mind?

A. I had no authority to offer the \$4,500, under discussion to Mr. Anderson, that being a company matter and the \$4,500 being deposited in a bank in San Jose by people living along [171] the right of way of the proposed railroad, but I told Mr. Anderson that I personally would be responsible for the payment to him of \$4,500 and that if the company did not turn him over the \$4,500 I would.

Q. Did you say anything to him at the time about what authority you had to deal with him?

A. I told him I had no authority from the corporation to turn him over the \$4,500, and that is the reason why for his own protection I made a personal contract.

Q. With regard to his employment, did you tell him anything about your authority?

A. No, I do not remember having made any statement to him about his appointment, because he did not have any appointment; he was doing work for which he would be paid when it was completed.

Q. He did that work at your request?

A. He did that work at my request.

Q. And at the time did you say anything to him about your authority to employ him?

A. No, I do not remember saying anything about it, Mr. Harby.

(Deposition of Charles A. Nones.)

Q. Do you remember Mr. Swayne testified that with regard to this railroad the company never authorized the expenditure of more than a certain sum of money, which appears, is set forth, in the minutes; were you present when he testified to that?

Q. Yes, but I do not remember those exact words.

Q. I want to direct your attention to the general subject; do you remember his referring to the minutes of the meeting as set forth in the minute-book at page 341, which has been marked for identification, where he referred to the following minute; I think he referred to it in substance, but I will read it to [172] you from the book: "The president then read a paper regarding an electric road to be built as follows (see page 342), and on motion of Mr. Whicher and seconded, it was resolved that before taking action on an electric road to be built from San Jose to the mine, that the president furnish a complete specification showing itemized costs, possible earnings, etc., to be submitted at a future meeting of the Board. Mr. O'Brien stated that he knew a competent engineer who could furnish such a report and he was requested to engage same." Do you remember Mr. Swayne pointing that out as being in the minute-book? A. Yes, I remember.

Q. And then do you remember his pointing out the minute of one meeting held on May 1, 1912, appearing at page 346 where there appears the following which I will read: "Moved and approved that the president's action in ordering the sum of, approxi-

(Deposition of Charles A. Nones.)

mately, \$3,000 to be charged to March expenses, said sum representing the amount of money actually expended upon right of way, surveys and cutting down grade for the proposed San Jose and Almaden road, all of which stock will be owned by The Quicksilver Mining Company. Further resolved that the president's action be approved in receiving the stock for account of The Quicksilver Mining Company from the San Jose and Almaden road, for the full amount of these expenses." Now, if I am not right in this, please correct me, but didn't Mr. Swayne say that that amount of \$3,000 was the only amount that the company had ever authorized to be expended on account of that road?

Q. Do you recollect that Mr. Swayne made a statement to that general effect? [173].

A. To the general effect, yes, but I do not recollect Mr. Swayne's words.

Q. Did the directors ever say that they would authorize the expenditure of any amounts on this road except such as appear to be set forth in the minutes which have been marked for identification?

A. The minutes tell the story.

Q. What I want to get you to say, Mr. Nones, is whether or not the minutes truthfully represent everything that was done by The Quicksilver Mining Company with regard to the San Jose and Almaden Road? A. Yes.

Q. At the time that you conceived the idea of building that road, had you, before doing anything

(Deposition of Charles A. Nones.)

with regard to it, first consulted the Board of Directors of the company?

A. I think so, Mr. Harby, I believe so; in fact I am quite sure.

Q. Were you the first one that suggested the railroad? A. The railroad was a necessity.

Q. Were you the first one that conceived the idea?

A. I could not tell you that; I do not remember.

Q. Did anyone suggest it to you or did you originate it?

A. No, as I remember it, I went out to California and I believed it was a necessity to the company.

Q. That was a result of your examination into certain conditions out there? A. Yes.

Q. And after you made that examination you arrived at the opinion that the road would be a good thing? A. Yes.

Q. That was while you were in California on some trip? [174] A. I think so.

Q. Did you then proceed to investigate into the thing? A. That is right.

Q. Did you employ people to assist you in this investigation while you were out there? A. Yes.

Q. Tell us specifically, if you remember; did you, while you were out there, having conceived this idea of building the road, then undertake an investigation into it and employ people to make further investigations to assist you, or did you return to New York and consult the directors about it?

A. I could not answer; it is too long ago; it is seven years ago.

(Deposition of Charles A. Nones.)

Q. No, it is two years? A. Six years.

Q. The minute is dated 1912 where the expenditure of \$3,000 is spoken of?

A. Yes, the first idea of building the road had occurred possibly a year previous; I could not tell you what I did, Mr. Harby.

Q. We are now in 1915; six years ago would be 1909; it was not under discussion in 1909, was it?

A. Under consideration?

Q. Yes.

A. No, but it was under consideration in 1912.

Q. By you? A. Yes.

Q. I do not find in the minute-book anything on the subject prior to September 20, 1911?

A. Well, that might be.

Q. I do not want to mislead you; I do not want you to think that I have examined every page to be sure that this is the first [175] item; I am asking you for information.

A. As near as I can remember I considered that idea first about the latter part of 1909 or 1910, but I would not be sure; I know it took me quite some time to get the consensus of the surrounding country.

Q. You proceeded to make an independent investigation? A. Yes.

Q. You examined into the population, I presume, and the needs of the locality? A. Yes.

Q. And got some idea of the cost of building this road? A. Yes.

(Deposition of Charles A. Nones.)

Q. And whether or not it would pay in your opinion? A. Yes.

Q. That was done out in California where there were not any meetings of the Board of Directors?

A. Yes.

Q. Did you plan out in your own mind what you were going to do?

A. I presume I did; I do not remember now what I planned. I had been working on the water and power matter for about a year before September 20th, 1911.

Q. There was a motion made with regard to the water, selling some securities of a water company, for \$150,000, and that appears to end the water business; then the next paragraph says that the president then read a paper regarding an electric road to be built as follows (see page 342), and on page 342 there is a three-page typewritten document signed Charles A. Nones; that is the first time that the railroad came before the Board of Directors, wasn't it?

A. Yes.

Q. This report speaks for itself; it is set out, physically attached to the minutes, at page 342, so I will not read it but to call it to your attention I state that it takes up the [176] following subjects: This electric road, and it speaks of our maximum transportation tonnage, has a certain daily capacity; then you go on to state that in the near future we will have to consider the handling of not less than sixty tons daily; then you speak of the cost

(Deposition of Charles A. Nones.)

of doing that, and then you say, I submit the proposition to the board regarding an electric road to be built from San Jose to the furnaces; then you say that there have been several meetings in regard to this matter with residents of the Valley who are unanimously in favor of this undertaking and have so far subscribed in cash about \$10,000, being a donation for which they will receive neither stock nor bonds of the proposed road, and then you say I believe this donation will amount to \$15,000 before the road is built. Then you speak of a right of way, and you say, there has been granted to me personally for about three-quarters of the distance of a private right of way of twenty feet width, and also sufficient land for turnouts and stations, and that the balance of the right of way necessary will have to be acquired from the county and will cost a few hundred dollars. You remember that, don't you?

A. I think it is a mistake; it ought to have been granted to us. Still, it might have been granted to me.

Q. There were certain things you did personally and subsequently were prepared to transfer to the company? A. Yes.

Q. Was not Anderson one of these personal things?

A. Anderson was personal absolutely, and before I gave him a note, which I cannot remember, it is an absolute fact that his obligation was personal. [177]

Q. The note is said to be a personal note?

(Deposition of Charles A. Nones.)

A. I never gave the company note.

Q. You have not a positive recollection?

A. I have not; I do not remember.

Q. You say at the end of this typewritten report, referring to this road, from which I have been reading: "This proposition is worthy of the most serious consideration. I have devoted several months of it, and have obtained the approval of the majority of the property owners whose lands are along the proposed line of railway." So I would assume from the statement that several months prior to the date of that statement you had been giving your attention to that railroad; is that in accord with your recollection? A. That is correct.

Q. There was some corporation formed by Mr. Burnett, wasn't there, an attorney there in San Jose?

A. Yes.

Q. Were any things acquired along that railroad line? A. I think so, Mr. Harby.

Q. Were any things transferred to The Quick-silver Mining Company along that railroad line?

A. No, I think it was all transferred to the San Jose and Almaden Railroad Company; in fact I am positive of it.

Q. What I want to get at is anything that might show that you knew that this thing was being done for a railroad corporation?

A. He was a director, if I am not mistaken, of the San Jose and Almaden Railroad.

Q. You understand, Mr. Nones, that the fact that

(Deposition of Charles A. Nones.)

this railroad in your opinion would make it easier to handle business of The Quicksilver Mining Company and therefore in your opinion would have been of some advantage to The Quicksilver Mining [178] Company and therefore in your opinion would have been of some advantage to The Quicksilver Mining Company, calls for an explanation of your testimony that you secured the services of Mr. Anderson on your personal account and not as an officer of The Quicksilver Mining Company; that is the point of this whole cross-examination; you understand that, don't you? A. Yes.

Q. Well, you understand that it seems to some an anomalous state of affairs that the former president of The Quicksilver Mining Company should appear in this action as a witness on behalf of the company with which he became unpopular, I might say, and then testifies that this man who is now suing the company has no cause of action against the company because that man was personally employed by the former president; that is the anomalous situation, and I would like a full explanation without being prompted?

A. I never asked a man to do any work without paying him for it, and up to within a short time I have always paid what I contracted, and when I agreed to give Anderson \$4,500, I was satisfied that upon my recommendation the company would turn that \$4,500 over to Anderson, but if they did not I would hold myself personally responsible for the amount of money to Anderson.

(Deposition of Charles A. Nones.)

Q. That is to say, you anticipated that if that transaction was placed before the Board of Directors of The Quicksilver Mining Company, they would assume the obligation?

A. Precisely, and if they did not I was willing to, but whether I gave him the \$4,500 more or not I do not remember, and if it should prove that it is in existence it bears out my [179] contention that it was a personal obligation that I assumed, and it is not the first one of its kind that I have been foolish enough to assume.

Q. Now, I want to know whether, in dealing with Mr. Anderson, you dealt fairly with him and let him know that condition of affairs, or whether you concealed from him that you did not have the express authority by resolution of the Board to so employ him?

A. Mr. Anderson knew that I had no authority to dispose of \$4,500 whatsoever.

Q. How could he know that?

A. Because he received the \$4,500, letter from me, explaining the matter.

Q. That was a subject of discussion between you and him? A. I do not know.

Q. Of conference? A. Of conference, yes.

Q. And the result of that was the giving of this letter?

A. The giving of this letter, and if the note is in existence the giving of the note.

Q. At the time that Anderson was doing this work,

(Deposition of Charles A. Nones.)

did that antedate this meeting of the Board of Directors whose resolution I read to you?

A. I could not tell you, Mr. Harby.

Q. Was the work done by Anderson before your typewritten report?

A. It was done before, yes.

Q. And up to the time of the typewritten report that you made the building of this road was not considered by the Board of Directors at all? [180]

A. Oh, yes, it was considered; they had notification of that?

Q. Prior to the making of the typewritten report in 1911?

A. Oh, no, not prior to 1911, but it might have been.

Q. If it was considered by them at all, there is a record of it in the minutes? A. There must be.

Q. And if there was not a record in the minutes, it was not considered? A. Not officially.

Q. Was there any unofficial action?

A. I could not say, Mr. Harby; I do not remember; I may have spoken to them in reference to it.

Q. Have you any recollection of having done so?

A. I cannot place my dates back of 1911.

Q. You have not any recollection of having considered the road with the directors of The Quicksilver Company prior to September, 1911?

A. No, but I think I did.

Q. Why do you think it if you have no recollection?

(Deposition of Charles A. Nones.)

A. For the reason that I must have considered it previous to making the report.

Q. That is a matter of deduction?

A. It is a matter of deduction.

Q. If you did not find anything in the minutes on the subject you would assume that you had not had any official consideration?

A. I should say I had no official consideration.

Q. But you think you may have spoken to somebody individually on the subject?

A. Quite likely.

Q. Have you any recollection of having done so?

A. I have no special recollection of having done so. [181]

Recross-examination by Mr. BLANDY.

Q. If there was received from these property owners the \$4,500, why wasn't it used to pay Mr. Anderson?

A. For the reason that the \$4,500 was only to be paid upon the completion of the road.

Q. Was the road ever completed? A. No.

Q. Never completed? A. Never built.

Q. Never built up to the time of your severing your connection with The Quicksilver Company?

A. No.

Q. What is the matter?

A. I do not know what the matter is; you mean whose fault it was?

Q. Yes, why wasn't it built?

A. I do not know whose fault it was, Mr. Blandy.

(Deposition of Charles A. Nones.)

Q. If it was conceded to be such a good thing and was going to inure to the benefit of The Quicksilver Company, why wasn't it built?

A. I suppose the people who succeeded me did not agree with my ideas.

Q. Yes, I think it was; well, now, then I ask you why it was not built; was it the bankruptcy of The Quicksilver Company? A. No.

Q. Or the insolvency of The Quicksilver Company? A. No.

Q. Or financial troubles that prevented it?

A. No.

Q. Just a change of policy on the part of those who succeeded you? A. I could not tell you.

Q. Oh, yes, you know something about it; you said you did? [182]

A. I do not, Mr. Blandy; pardon me, you are throwing me too many bouquets; you have to be careful about it or I will get a big head after awhile.

Q. I think you have got that already; that is shown on the minutes of this meeting; you were the biggest president I have ever seen. Well, now, coming back to earth, I am really mystified to know why that \$4,500 was not used as it was expected to be used?

A. I could not answer that question, Mr. Blandy.

Q. * * Well, my question to you a moment ago was whether you came upon the scene as a secondary party after Mr. Anderson had done his work and the railroad was abandoned or whether you were the contracting party with him from the beginning; now which was it? A. From what beginning?

(Deposition of Charles A. Nones.)

Q. (The question beginning, "Well, my question to you a moment ago," etc., was repeated to the witness.) A. From the beginning of the railroad.

Q. From the beginning of the employment of Mr. Anderson?

A. Mr. Anderson must have been employed.

Q. I don't care what he must. Answer my question? A. I cannot.

Q. You cannot answer it?

A. It is not intelligible to me.

Q. Is it because of the fault of your intellect or your want of honesty as a witness?

A. No, Mr. Blandy—

Q. You have taken the position on this reference that this claim which Mr. Anderson makes against this Quicksilver Company [183] was not the debt of the Quicksilver Company but was your debt, haven't you? A. I have.

Q. And you mean by that that you personally employed Mr. Anderson to do this work and you personally agreed to pay him, that is what you mean?

A. I became personally responsible.

Q. Now, I put again to you the question—You have said that this was not the debt of the Quicksilver Mining Company but was your personal debt, I ask you whether you personally employed Mr. Anderson to do that work for you?

A. I cannot remember my exact words to Mr. Anderson.

Q. I want to know whether the claim you are making to-day is based on that letter, or on that letter

(Deposition of Charles A. Nones.)

and something else? A. That letter.

Q. All right. Well, you are sufficiently intelligent to appreciate the difference between a debt which one contracts personally and a debt or obligation which one guarantees, aren't you?

A. I do not think there is any difference; I do not think any honest man would think there was any difference. What is the difference whether you contract a debt or whether you guarantee a payment for his services?

Q. A big difference.

A. My morals teach me that there is none.

Q. Your morals are sadly at fault.

A. Possibly, but I prefer them.

Q. You guaranteed for him? [184]

A. To see that the \$4,500, or its equivalent amount was turned over to Mr. Anderson, basing my judgment upon the fact that the directors upon my recommendation would turn that amount over to Mr. Anderson, and if they did not I would pay him myself.

Q. Whose debt were you guaranteeing him?

A. The Quicksilver Company, who were the owners of the majority stock, all the stock of the railroad company.

Q. Then, according to that explanation, Mr. Nones, isn't it perfectly obvious to you that the debt in the first instance was The Quicksilver Company's debt but that you agreed to [185] remain surety for them, or the guarantor for them, and that you were a secondary party?

(Deposition of Charles A. Nones.)

A. I was not a guarantor for them at all; I was guarantor for Mr. Anderson; I cannot be guarantor for two sides.

Q. Whose debt were you guaranteeing the payment of?

A. I was foolish enough to guarantee a man, C. P. Anderson, to receive \$4,500; that is what I was doing; I assumed a foolish obligation so as to see Mr. Anderson succeed in business.

Q. Did you, in all this help, have any personal uses of your own?

A. No, I wanted to build The Quicksilver Mining Company.

Q. Did you have any money of your own at that time? A. Yes.

Q. Where? A. Several places.

Q. But you had no means of living except \$125 a month as president? A. Yes.

Q. What did you have?

A. I do not think I need state.

Q. You certainly will have to.

A. Then you will have to get me on an order.

Q. Now, Mr. Nones, in your schedule in bankruptcy, to which you have referred, you will find that under oath you stated that you were indebted to Mr. Anderson for \$4,500 on a guaranty for work done by him for The Quicksilver Company; is that a true statement?

A. That is correct, yes, decidedly, decidedly.
[186]

(Deposition of Charles A. Nones.)

Redirect Examination by Mr. HARBY.

Q. When you had your talk with Mr. Anderson, was anything said between you as to whether he was to be paid in the event of the road not being finished?

A. I do not remember any such conversation, Mr. Harby.

Q. What I want to get at is whether his employment was contingent upon completion of the road and the payment of that \$4,500 or whether he was to be paid whether or not the sum of \$4,500 was delivered over?

A. Mr. Harby, I believe that Mr. Anderson considered me financially responsible such that if he was willing to accept my personal guarantee that he would get his \$4,500 he did not care where it came from.

Q. That is not the question; there is a road which you were trying to complete and certain people were helping you; now, was your agreement with Mr. Anderson that he was to be paid absolutely and at all events or that he was to be paid only in case the road was built?

A. I guaranteed him absolutely; I made a personal obligation.

Q. You mean you assured him?

A. I assured him personally that he was to receive the \$4,500.

Q. Didn't you say that he was to receive it when The Quicksilver Company received it?

A. The letter which I think, if I remember, Mr. Anderson has states—this is to my best knowledge

(Deposition of Charles A. Nones.)

and belief—that the \$4,500 is to be turned over to Anderson or I guarantee a like amount. I think you will find that in the letter.

Q. That is to say, your recollection of your understanding [187] with him was that in the event of the road being finished and the \$4,500 supplied by the people living along its proposed line being paid to the company, you would see that he would receive that \$4,500 and if the company did not pay it you would? A. I became guarantor.

Q. Did I state your understanding of the agreement between you?

A. Practically, I could not tell you now what my ideas were then, but I became guarantor to Mr. Anderson for \$4,500.

Q. You are not a lawyer? A. No.

Q. You do not pretend to state the legal difference between your undertaking to pay the debt of another upon the failure of the other to pay, or your undertaking to pay a man for services rendered to another, or your undertaking to pay a man for services rendered to another dependent upon certain conditions, do you? You do not undertake to state the legal difference between these propositions, do you? A. No.

Q. I merely want to know if you assume here to understand the legal effect of an agreement, of a contract, where you agree to employ a man for yourself, or whether you employ a man for somebody else and agree to pay him if somebody else does not pay him;

(Deposition of Charles A. Nones.)

are you assuming to express the difference?

A. No, I never considered that side of it.

Q. When you use the words "guaranty" or "guarantor" you are not assuming to use them in their definite meaning that they have in law, are you?

A. No. [188]

Q. Cannot you, without using some quasi legal term, state in plain English just exactly what was done with Mr. Anderson, bearing in mind the fact that you were, at the time you spoke to him and dealt with him, actually the president of The Quicksilver Mining Company, whether or not any resolution had been passed telling you to do what you did do; in other words, what I want to know is, whether you said to Anderson, "You do this work and if my employment of you is not approved by the Board I will pay it personally," or whether you said, "Anderson, you do this work for me individually," or whether you said something else to him.

A. To the best of my recollection and belief, the understanding between C. P. Anderson and myself was, that I guaranteed him the sum of \$4,500 which was the exact amount or the approximate amount, I think, the approximate amount, the residents along the proposed new line had voted; failing in having the \$4,500 paid him I agreed personally to pay him myself; I think I made six statements to that effect.

Q. Was anything stated in the letter, any event stated in the letter, which might prevent him receiving that \$4,500?

(Deposition of Charles A. Nones.)

A. No, because at the time the letter was written I had every idea that the road would be built.

Q. And the \$4,500 become payable then according to the terms of the agreement under which it was put up? A. Yes.

Q. But in the letter you assumed,—you did not have in mind the failure of the road, in this letter?

A. I did not.

Q. Then the thing you had in mind was that The Quicksilver Company might not authorize his employment, wasn't that it?

A. Precisely, and might not authorize the \$4,500; I made that statement before.

Q. While you were president, of course, you know that no action [189] was commenced against The Quicksilver Company?

A. No, there was no action.

Q. None whatever by Mr. Anderson? A. No.

Q. He never presented any bill to The Quicksilver Company for the matters set forth in this complaint in this action while you were president?

A. Never did.

Q. None that you know of?

A. None that I know of.

Q. None came to your personal notice; none came to the New York office that you know of?

A. None that I know of.

Q. And after the time of the alleged performance of these services, you were out in California, were you not? A. I believe so, yes.

(Deposition of Charles A. Nones.)

Q. And on the company's business? A. Yes.

Q. And the office in California continued to be maintained, did it not? A. Yes.

Recross-examination by Mr. BLANDY.

Q. Did Mr. Anderson send a bill to The Quicksilver Company for \$7,411?

A. Never to my knowledge.

Q. Did he so far as you know send any bill to The Quicksilver Company for any amount?

A. I dare say he did; he had expenses which were all paid, to the best of my knowledge and belief.

Q. You said in answer to Mr. Harby's recent question, *fail-* payment I agreed personally to pay him; what did you mean by "failing payment"?

A. Failing for him to receive the payment; his failure to receive the money; his failing to be paid the \$4,500. [190]

Q. You are referring to the \$4,500 contributed by the property owners?

A. Yes; that is the only agreement I made with Anderson.

Q. Was it your understanding that that \$4,500 was put up in trust for the benefit of Mr. Anderson?

A. No.

Q. Was it your understanding that Mr. Anderson had any title to that \$4,500?

A. None whatsoever.

Q. But, Mr. Nones, the question is still open as to who was the employer of Mr. Anderson in connection with this work which he did?

(Deposition of Charles A. Nones.)

A. I cannot tell you, Mr. Blandy; I am going to leave that to the courts; that is what they are going to pass upon.

Q. I fail to appreciate—the fault may be mine—whether Mr. Anderson was employed by you in your individual capacity as a gentleman, quite irrespective of your official position as president—or second, whether he was employed by those who held this \$4,500, or, third, whether he was employed by the Quicksilver Mining Company, the defendant. Now, if you will be kind enough to elucidate that, by telling me by whom he was employed?

A. I could not answer that, Mr. Blandy.

Q. Well, his employment must have been your own debt?

A. I have always considered it as my debt.

Q. What did you mean when, in your schedules, you said that you guaranteed the payment of this \$4,500, which was for services rendered by Mr. Anderson for The Quicksilver Company? [191]

A. I have explained all through, Mr. Blandy; I explained that I became personally responsible for the \$4,500 in case the directors or officers of the company refused to give it to Mr. Anderson; I think I made ten or twenty explanations of that.

Q. But you have already had it explained to you by Mr. Harby that the word “guaranty” presupposes that there was an original debtor and you were secondary in your obligation as guarantor?

A. I know nothing of the law; I simply guaranteed the \$4,500.

(Deposition of Charles A. Nones.)

Q. And you guaranteed him that \$4,500 for his services for The Quicksilver Company?

A. I did.

It is consented that the excerpt from C. A. Nones' bankruptcy schedule "A (3)" "Creditors Whose Claims are Unsecured" be received in evidence as far as the first item on the sheet is concerned, namely, "C. P. Anderson" etc. The schedule was received in evidence and marked Plaintiff's Exhibit 2, March 8, 1915. [192]

Deposition of Margaret A. Bowe, for Defendant.

MARGARET A. BOWE, called as a witness on behalf of the defendant, and being duly sworn by the Commissioner, testified as follows:

Direct Examination by Mr. HARBY.

I am over the age of eighteen years. At one time I was Secretary of The Quicksilver Mining Company; I was secretary from June, 1910, to June, 1913, inclusive. I do not know Mr. Anderson, the plaintiff in this action; he was never here in the New York office of the company while I was secretary. When I was secretary, the head of the office was the president, Mr. Nones; I was there as secretary; there was an office boy. I was also an operator on the typewriter.

I recognize the book (being Defendant's Ex. 1 for Identification) as being the minute-book of The Quicksilver Mining Company under my charge as secretary. It is my writing from here (indicating). Commencing with page 302 of that book I made the

(Deposition of Margaret A. Bowe.)

entries contained therein in my own handwriting at each meeting. The meetings of which minutes are purported to be entered in that book were always held as set forth in the minutes. No minutes were ever written to my knowledge of meetings that were not held. Mr. Nones prepared the minutes; he would dictate to me what to write in the book unless something special came up that I would take.

Q. Did the New York office keep a set of cash-books showing the expenditures of cash?

A. No, it just had a blotter; we kept the amount of the accounts and at the end of the year they were sent to California where the books were kept. [193]

Q. The blotter was never kept in the office?

A. No, went on to Mr. Tatham.

Q. Tatham was the manager at the mines in California? A. Kept the books too,—bookkeeper.

Q. Bookkeeper as well? A. Yes.

Q. There was no regular register showing the moneys received and expended at the New York office? A. No.

Q. Do you know about any moneys being sent to Mr. Anderson?

A. By the Quicksilver Mining Company?

Q. Yes. A. No.

Q. Do you know of any correspondence with Mr. Anderson? A. No.

Q. Was any had to your knowledge while you were in the office? A. No.

Q. You had charge of the correspondence, did you not? A. Yes.

(Deposition of Margaret A. Bowe.)

Cross-examination by Mr. MARSHALL.

I think I became secretary of the Company in June, 1910. The minutes of the meeting appearing on page 302 of the minute-book are the first minutes which were written up by me; that was the election where I was appointed secretary. I believe I heard the matter of the construction of an electric road to connect San Jose with the mine discussed by Mr. Nones with the other directors of the company; I could not fix a date; I should say 1912 but I could not be sure. I do not know what engineer was referred to by Mr. O'Brien; Mr. O'Brien was a director of the company.

Mr. Nones had been in California; he was one time four months away, so there would not be any minutes. I couldn't [194] tell you whether that was the period along through from October, 1911, until March, 1912; I say there was one time he was away four months, but I just couldn't tell you; the notices went out regularly, whether there was a quorum or not.

Q. Did you ever hear of Mr. Swayne going to California, Miss Bowe? A. No.

Q. Do you know of any of the directors who had occasion to go to California on the company's business except Mr. Nones as president of the company?

A. I think not.

Mr. Nones had charge of the office; there should be meetings of the Board of Directors every month. At those meetings Mr. Nones would report what had

(Deposition of Margaret A. Bowe.)

been done concerning the business affairs of the company and the things which had been accomplished would be discussed with the directors. The minutes would state whether Mr. Nones' transactions were approved. I cannot remember any disapproval of any of his executive acts as president.

Redirect Examination by Mr. HARBY.

Q. Were there any reports as to the company's business made at meetings of directors except those appearing in the minutes?

A. Controversies often came up; I cannot remember just what was approved or disapproved; something that comes up is not always approved.

Q. You were asked whether Mr. Nones stated the expenditures made by him and things done by him every month—whether he made statements concerning these things to the Board of Directors. What I want to know is whether the minutes set out the things [195] that he said before the Board of Directors or whether they fail to set them out, during the time that you kept the minutes?

A. What took place at the meeting, if they were recorded?

Q. Yes. A. Surely.

Q. They were recorded? A. Surely.

Q. There wasn't anything that took place at the meetings that you failed to record? A. Never.

Q. Then the statements that he made to the Board of Directors and disclosures concerning anything were made as recorded and not otherwise; is that so?

A. Yes.

(Deposition of Margaret A. Bowe.)

Recross-examination by Mr. MARSHALL.

Q. But you did not attempt to record all the discussions in the various statements which were made by the directors, did you?

A. I took down all I was told to for the minutes.

Redirect Examination by Mr. HARBY.

Q. They correctly state the transactions that took place at these meetings? A. Yes. [196]

Mr. HERRINGTON.—That is the plaintiff's case.

Thereupon, by consent of counsel, it was stipulated that Mr. Jarman of counsel for The Quicksilver Mining Company, if sworn, would testify as follows:

That some considerable time after the change in the management of the Mining Company, in June, 1913, the witness last upon the stand came to him about a balance owing for surveying done for the proposed Almaden railroad; he said he wanted his money and must have it. The mining company owns in Santa Clara County some 7,000 acres of land. The lines are somewhat uncertain; the titles are somewhat uncertain. It is necessary that a survey he had and that an action to quiet title be instituted in order to perfect same. That the president of the company had instructed him to do that work, but for other reasons the matter was delayed. That when in New York he consulted with the president and one of the directors of the Mining Company and advised the company to pay the balance due to Mr. Herrmann for the reason that if he was not paid he

(Deposition of Margaret A. Bowe.)

would become very much dissatisfied and would likely refuse to do the surveying necessary to perfect the title to the company's property; that Mr. Herrmann was a man of some means, of a very determined character and that it would be better for the company to buy his friendship for \$470.50 than to hire a new man; that Mr. Herrmann was a resident of Santa Clara County for many years; was a man of fine reputation and that the company could rely upon his work. Mr. Sexton and Mr. Frank said that they would see about it and after some time Mr. Sexton finally wrote that upon my recommendation they would pay Mr. Herrmann the balance due. [197]

Mr. JARMAN.—The defendant rests.

Mr. HERRINGTON.—That is all.

Mr. JARMAN.—Now, about submitting this matter on briefs. How do you want that done, Mr. Herrington?

The COURT.—Is it the purpose to have the testimony written up, gentlemen?

Mr. JARMAN.—We are quite willing on our part.

Mr. HERRINGTON.—It probably would be better.

The COURT.—Let an order be made that it be written up, each side to pay one-half the expense, the item to be charged as costs and to abide the final determination of the suit.

Mr. HERRINGTON.—That will be satisfactory.

The COURT.—It will be so ordered.

(Deposition of Margaret A. Bowe.)

Thereupon by stipulation of the parties the matter was submitted upon briefs to be filed.

Thereafter, the Court rendered its decision in favor of plaintiff and against defendant, a copy of which is attached hereto and made a part hereof and marked "Opinion." [198]

That since the said judgment in favor of the plaintiff, as aforesaid, said District Court, from time to time, by order duly made, has granted to said defendant extensions of time to and including December 31st, 1916, in which to prepare, serve and file its Bill of Exceptions, to be used on any Writ of Error allowed, the said orders being signed by said Court, and filed herein in the office of the clerk of said court.

The foregoing constitutes all of the proceedings had and all of the testimony offered and received on the trial of said cause.

And now within the time required by law and the rules of this court, said defendant, The Quicksilver Mining Company, proposes the foregoing as and for the Bill of Exceptions as aforesaid, and prays that the same may be settled and allowed as correct.

Dated December 30, 1916.

A. H. JARMAN,
Attorney for Defendant, The Quicksilver Mining
Company, a Corporation.

**Stipulation That the Foregoing Bill of Exceptions be
Settled and Allowed as Presented.**

The proposed Bill of Exceptions, and the proposed Amendments thereto, having been duly presented by respective counsel, and same having been

settled and allowed by counsel by agreement, and said amendments having been incorporated in the said Bill of Exceptions within due time—

IT IS THEREFORE STIPULATED AND AGREED that the foregoing Bill of Exceptions is correct; that it contains all of the testimony [199] offered and received, and a correct reference to all the exhibits introduced, and true and correct copies of the material parts of the same, and of all of the proceedings had on the trial of said cause, provided, however:

At the time of the preparation of the within Bill of Exceptions, Defendant's Exhibit 1, namely, the Official Minute-book of The Quicksilver Mining Company, could not be found among the exhibits in said cause in the files of the clerk's office of said District Court, nor has the same since been located or discovered. The excerpts contained in the within bill were taken from what purports to be a copy of a certain portion of said minute-book in the possession of defendant, plaintiff in error herein.

It is hereby stipulated that in the event the said original Exhibit 1, to wit, the said official minute-book of The Quicksilver Mining Company, be discovered, that plaintiff, defendant in error herein, may have corrected any matters or things contained in the within Bill, and purporting to be excerpts from said official minute-book, which may not be in accordance therewith; that is to say, any inaccuracies may be corrected, and in addition thereto, any other or further matters contained in said official minute-book may be presented as plaintiff, defendant in error herein, may desire.

IT IS FURTHER STIPULATED that this Bill of Exceptions, as engrossed, be settled and allowed by Honorable Wm. C. Van Fleet, Judge of said court, in accordance with this stipulation.

Dated January 18, 1917.

B. A. HERRINGTON,
Attorney for Plaintiff.

A. H. JARMAN,
Attorney for Defendant. [200]

Order Settling and Allowing Bill of Exceptions.

The foregoing Bill of Exceptions being now presented in due time and found to be correct by stipulation of the parties, and pursuant to such stipulation I do hereby certify that the said Bill of Exceptions is a true Bill of Exceptions, and that it contains all of the testimony offered and received, and a correct reference to all the exhibits introduced, and a true and correct copy of the material parts of the same, and of all of the proceedings had on the trial of said cause.

Dated February 15th, 1917.

(Sgd.) BENJAMIN F. BLEDSOE,
Judge of Said Court. [201]

**Defendant's Exhibit "A"—Excerpts from S. F.
"Chronicle," April 2, 1913.**

San Francisco Chronicle,
Wednesday, April 2, 1913.

**QUICKSILVER TRUST STOCKHOLDERS
FIGHT CHIEF.**

**Row Over Mine Threatened to Break in Federal
Courts of San Francisco To-day.**

Government Has Books.

**Local Expert is not Allowed to Investigate Famous
Mine Near San Jose.**

A row among the stockholders and directors of The Quicksilver Mining Company, owner of the famous New Almaden Mine between San Jose and Los Gatos, and controlling practically the world's output of quicksilver, has assumed such proportions that it promised, for a short time to-day, to break out in the Federal Courts of San Francisco to-day.

* * *

A Stormy Meeting.

Back of Landers' appointment is the story of a stormy stockholders' meeting held in New York, at which charges of mismanagement were made and the resignation of president, Charles A. Nones, demanded. Nones declined to resign, and although he nominally presided at the meeting, the leadership was wrested from him when he declined to put numerous motions before the meeting. * * *

C. P. Anderson, right of way man for Nones in the promotion of the New Almaden Railroad, which fig-

ures in the charges against the president of the company, said to-night that \$4500 received from the property owners along the proposed [202] line had been returned to them because the guarantee made when the money was placed in escrow in the First National Bank, that the line would be in operation by March 6th last, could not be fulfilled. The rights of way have been extended for six months from March 6th. Anderson understands. He says the Quicksilver Mining Company is behind the proposed road and that it will be built. [203]

Plaintiff's Exhibit 1—Articles of Incorporation of Senonac Power Company.

Plaintiff's Exhibit 1, to wit, a copy of the Articles of Incorporation of the Senonac Power Company of California is in the usual form and is dated March 18, 1912.

The capital stock is Five Hundred Thousand (\$500,000) Dollars, divided into five thousand (5000) shares, of the par value of \$100 each.

The subscribers and incorporators are Charles A. Nones, C. P. Anderson, J. F. Tatham, A. L. Brassy and D. M. Burnett, one share each.

The purposes of the corporation are declared in the second paragraph thereof, to wit:

Second. That the purposes for which it is formed are the following, to wit: To generate, manufacture, purchase and transmit electricity, electrical current, and electrical energy, for the supplying of mines, quarries, railroads, tramways, mills, and factories with electric power, and also for applying of electricity to light or heat mines, quarries, mills, fac-

tories, incorporated cities and counties, and villages and towns, and also for furnishing electricity for lighting, heating or power purposes to individuals or corporations, and to acquire, appropriate, construct, maintain and operate canals, reservoirs, dams, ditches, flumes, aqueducts, pipes and outlets for supplying, storing and discharging water for the operation of machinery, for the purpose of generating and transmitting electricity for any of the above purposes and any and all other purposes: To acquire, construct, purchase, hold, lease, own, maintain and operate all kinds of electrical plants or machinery, and lines for the generation and transmission of electrical current or electrical energy, [204] and to construct, acquire, appropriate, purchase, hold, lease, own and operate and maintain, sell, and let out electric power lines, electric heat lines, and electric light, heat and power lines; and to manufacture, generate, transmit, sell, supply, and otherwise deal in and dispose of electrical current and electrical energy, and to sell, supply, furnish and deliver to the inhabitants of counties, incorporated cities, cities and counties, villages and towns, water, water power, electric lights, heat and power for municipal, domestic, irrigation, mechanical, industrial, and all other lawful purposes, and to appropriate, acquire, construct, maintain and operate ponds, lakes, waters, rivers, creeks, water courses, canals, aqueducts, reservoirs, tunnels, flumes, ditches and pipe-lines, dams, rights of way, water rights of all kinds, and all other property and works necessary or convenient for the catch-

ment, diversion, storage, or distribution of water. To take, acquire, own, handle, sell, lease, hire, mortgage, and encumber lands, tenements and hereditaments. To acquire, purchase, buy, sell, lease, rent, hypothecate and pledge personalty and choses in action. To borrow money, and to mortgage or convey in trust or pledge any of its property for the purpose of securing any indebtedness which it may contract. To loan money and take security for the payment thereof. To buy, sell, deal in, hold and own bonds, debentures and evidences of indebtedness of itself and other corporations, and natural persons and stocks of other corporations and its own stock, and to acquire, own, obtain and use inventions, patents, patent rights, licenses and privileges, and franchises to exercise the right of eminent domain for any and all lawful purposes, and to acquire, own, construct, maintain, operate, and use any and all property of all kinds, including lands, buildings, works, machinery, apparatus, materials, franchise rights and privileges fit, proper, necessary or useful in carrying out any of the purposes of the corporation. [205]

**Plaintiff's Exhibit No. 5—Articles of Incorporation
of San Jose and Almaden R. R. Co.**

Plaintiff's Exhibit No. 5, to wit, a copy of the Articles of Incorporation of the San Jose and Almaden Railroad Company, is in the usual form, and is dated October 13, 1911.

The capital stock is One Hundred and Twenty Thousand (\$120,000) Dollars, divided into twelve hundred (1200) shares of the par value of \$100 each.

The subscribers and incorporators are C. P. Anderson, J. F. Tatham and D. M. Burnett, for one share each, and Charles A. Nones subscribing for 117 shares.

The purposes of the corporation are declared in the second paragraph thereof, to wit:

Second. That the purposes for which it is formed are the following:

To engage in and conduct the business of a carrier of passengers, freight, mail, baggage and express for compensation. To acquire, construct and operate a railroad in the State of California, and to acquire and hold franchises, rights of way, and lands; to construct, maintain and use tracks, side tracks, spur tracks, switches, turnouts, depots, warehouses, car houses, power houses, terminal accommodations, building and repair shops, machinery, wires, wire lines and all structures, appurtenances, appliances, equipments and adjuncts, for the operation of said railroad.

To acquire other railroads, and leasehold and other interests in other railroads, and to operate railroads other than that which is firstly hereinabove mentioned.

To acquire, construct and operate power houses and electrical plants, poles, wires and lines and acquire and have all [206] lands, franchises, rights and privileges for the erection and operation of machinery and appliances for the production, manufacture, use, distribution, and sale of electric motor power, heat and lights and to produce, manufacture, use, distribute, and sell the same.

To sell, convey, alienate, encumber, hypothecate, lease and otherwise dispose of its franchises and property, of every character. To borrow money, execute promissory notes, bonds, and evidences of debt and secure payment of the same by mortgage, deed of trust, pledge or other encumbrance, or transfer of its franchises and property.

To acquire, hold, perfect, sell, pledge, and otherwise dispose of inventions, patents, patent rights, and also shares of the capital stock of other corporations, and generally to have and exercise all the powers, rights, privileges and franchises of a railroad corporation under the laws of California, as now or hereafter existing.

The kind of railroad to be acquired, constructed, operated and dealt with as aforesaid is a commercial railroad for the transportation of passengers, freight, mail, baggage and express, having a standard gauge, and one or more tracks, with all structures, appurtenances, appliances, equipments, accommodations and adjuncts necessary or convenient to the operation of the same. Said railroad to be operated by electricity, gas, or other lawful power.
[207]

Plaintiff's Exhibit 1—Minutes of Meeting of Stockholders of The Quicksilver Mining Co., February 15, 1913.

EXHIBIT REFERRED TO IN DEPOSITIONS.

Plaintiff's Exhibit "1" is a copy of the minutes of the meeting of the stockholders of The Quicksilver Mining Company, held at the office of the Company, 45 Broadway, City of New York, on Feb-

ruary 15, 1913, at 1 o'clock P. M.; and contains some thirty-one pages of closely printed matter, most of which is immaterial to any inquiry on this appeal.

The following extracts are sufficient to advise the Court of the nature and character and purpose of the meeting:

“Mr. Charles A. Nones, President of the Company, in the Chair.

Mr. CHAIRMAN.—This looks like a special meeting of the stockholders of the Quicksilver Mining Company. I will read you the report for the year ending December 31st, 1912.

Mr. HARBY.—Before you do that, Mr. President, I move that the meeting be convened and that steps be taken to ascertain what stockholders are present in person or represented by proxy, so that we can ascertain whether we have a quorum present.

The CHAIRMAN.—I do not see any reason for that, Mr. Harby. The meeting was called by twenty-five per cent, ostensibly, of the stockholders, and I do not see that there is anything to do at this meeting except to see what the President has to say.

Mr. HARBY.—Perhaps not, Mr. Nones; but I now make a motion that the President call the meeting to order, and that a Committee be appointed to ascertain what stockholders are here in person or represented by proxies. [208]

A STOCKHOLDER.—I second the motion.

The CHAIRMAN.—Well, the motion is not allowed, as Chairman of this meeting, for this reason—

Mr. HARBY.—I appeal from the decision of the

Chair and ask to have a vote taken as to whether the Committee be appointed.

* * * * *

The CHAIRMAN.—I refuse to put any motion before the meeting.

Mr. HARBY.—Gentlemen, I will put the motion. The Chair has ruled that a Committee be not appointed to examine into the qualifications of stockholders who may be present and to examine into the proxies. We have appealed from the decision of the Chair, and he has refused to put that motion. As a stockholder of record, I put the motion, and I ask you, all those in favor of reversing the decision of the Chair and having such a Committee appointed say aye.

(A chorus of ayes.)

Mr. HARBY.—Opposed?

(No response.)

* * * * *

Mr. HARBY.—I would like to ask if the company obtained a charter for the building of a railroad?

The CHAIRMAN.—No, sir.

Mr. HARBY.—Was anything expended on account of obtaining the charter?

The CHAIRMAN.—Yes, about \$3,500.

Mr. HARBY.—I would like to ask how that was expended?

The CHAIRMAN.—That was expended under direction of counsel, Mr. Burnett, of Wilcox & Burnett, of San Jose. [209]

Mr. HARBY.—For what purpose?

The CHAIRMAN.—For the purpose of obtaining rights of way for the New Almaden & San Jose Railroad, of which the Quicksilver Mining Company owns all the stock.

Mr. HARBY.—This road you mentioned is an incorporated affair?

The CHAIRMAN.—Yes.

Mr. HARBY.—And the stock has been transferred to the Quicksilver Mining Company?

The CHAIRMAN.—Yes, sir.

Mr. HARBY.—But a franchise for the road has not been obtained?

The CHAIRMAN.—It has, but not in the name of the Quicksilver Mining Company; in the name of the New Almaden & San Jose Railroad Company.

Mr. HARBY.—Was anything expended in obtaining that franchise?

The CHAIRMAN.—Not one cent. About three-quarters of it is private right of way; the balance is a public franchise.

Mr. HARBY.—Has anything been done towards the construction of the road?

The CHAIRMAN.—The grades have been cut down.

Mr. HARBY.—To what extent?

The CHAIRMAN.—Possibly \$1,500 or \$2,000 has been spent; I cannot tell you exactly.

* * * * *

The CHAIRMAN.—The percentage of the right of way is mostly over flat land; it has only been the heavy grades which have been cut down. [210]

Mr. HARBY.—Was it a mile or two miles?

The CHAIRMAN.—No, I should say anywhere from a quarter of a mile to three-eighths of a mile of heavy grade.

Mr. HARBY.—Did the directors authorize the expenditure of that \$3,500?

The CHAIRMAN.—They did.

Mr. HARBY.—When?

The CHAIRMAN.—About two years ago, I think.

Mr. HARBY.—Has any report of that been made to the stockholders?

The CHAIRMAN.—It has.

Mr. HARBY.—In your annual report?

The CHAIRMAN.—It has.

Mr. HARBY.—Under what heading have you put it?

The CHAIRMAN.—Under—I think the last year you will find it.

Mr. HARBY.—What do you call it in your report—general or miscellaneous expense?

The CHAIRMAN.—No, I call it Bills Receivable of the Quicksilver Mining Company, and that is part of the Bills Receivable of the Quicksilver Mining Company from the San Jose & New Almaden Railroad; it is the money that the Quicksilver Mining Company loaned to the San Jose & New Almaden Railroad Company, vouchers for which are on hand in San Jose.

Mr. HARBY.—Has the company got a bank account?

* * * * *

A STOCKHOLDER.—May I ask a question?

In asking whether the books of the company are here, does the gentleman mean the Stock Books, or the Business Books of the Company? [211]

A STOCKHOLDER.—I mean both.

Mr. CONBY.—As I understand it, the Stock Books are at the Farmers Loan and Trust Company where the stock is transferred; the business books of the corporation Mr. Nones can tell you about.

A STOCKHOLDER.—That is what I want to clear up; are not these business books here?

THE CHAIRMAN.—No, sir; they are in California, where they have always been kept.

A STOCKHOLDER.—The business books are in California—that is where the principal business of the Company has always been done?

THE CHAIRMAN.—Yes.

THE SAME STOCKHOLDER.—It would be natural that the business books would be kept where the business is actually being done.

ANOTHER STOCKHOLDER.—I do not agree to that at all.

A STOCKHOLDER.—But full extracts and full reports of those business books are sent to the New York office here, are they?

THE CHAIRMAN.—The monthly reports are.

A STOCKHOLDER.—Only the monthly reports?

THE CHAIRMAN.—Yes.

A STOCKHOLDER.—No details?

THE CHAIRMAN.—No, sir.

Mr. HARBY.—Do you not keep duplicate accounts here of what goes on with the Company's property?

THE CHAIRMAN.—We keep monthly accounts of the general operation of the Company.

A STOCKHOLDER.—The Board of Directors meets here, doesn't it?

THE CHAIRMAN.—Yes.

THE SAME STOCKHOLDER.—Can the Board of Directors intelligently pass on the vouchers without having the vouchers before [212] them?

THE CHAIRMAN.—I suppose we may have fifty thousand vouchers in one year.

THE SAME STOCKHOLDER.—What of that?

THE CHAIRMAN.—First of all, we haven't the clerks here to take care of the vouchers, nor have we the room.

THE SAME STOCKHOLDER.—When an item is put down, for example, as an expenditure of, say, \$3,500 for a certain purpose, would it not be natural, if the stockholders are to have information on the point, that they should have the details of the vouchers before them and accessible to them? [213]
EXHIBIT REFERRED TO IN DEPOSITIONS.

Plaintiff's Exhibit 2—Certified Copy of Portion of Schedules in Bankruptcy of C. A. Nones.

Plaintiff's Exhibit 2 is a duly certified copy of a portion of the schedules in bankruptcy of C. A. Nones, as filed in the District Court of the United States, for the Southern District of New York.

That portion thereof, relating to this case, is as follows, to wit:

“Names of Creditors: C. P. Anderson.

Residences: San Jose, California.

When and Where Contracted: San Jose, California,
January, 1911.

Nature and Consideration of Debt and Whether
Any Judgment, Bond, Bill of Exchange,
Promissory Note, etc., and Whether Contract
as Partner or Joint Contractor With Any Other
Person; and if so, With Whom: Guarantee of
Payment for Work Done for Quicksilver Min-
ing Company.

Amount: \$4,500." [214]

EXHIBIT REFERRED TO IN DEPOSITIONS.

This exhibit is the official minute-book of The Quicksilver Mining Company from June 15, 1909, to May 15, 1913. It contains much irrelevant matter to this inquiry. We include only such portions thereof as are relevant to the rights of the parties herein:

Defendant's Exhibit 1—Excerpts from Minute-book of the Quicksilver Mining Company from June 15, 1909, to May 15, 1913.

“ANNUAL MEETING OF STOCKHOLDERS.

New York, June 15th, 1910.

The meeting of the stockholders of The Quicksilver Mining Company was held at the office of said Company, on June 15th, 1910.

Charles A. Nones, President, in the Chair.

The President read the annual report of J. F. Tatham, General Manager, and also of the President.

* * * * *

On motion of Mr. Frank, duly seconded, and

there being no objection, the report of the President and action of the President were accepted and approved.

* * * * * * * *

The hour of two o'clock having arrived, the polls were opened and remained open until three o'clock. The Inspectors and clerk thereupon duly counted the votes and made a report which is as follows, to wit, —Votes cast by A. H. Swayne, G. Frank and C. A. Nones amount to 48,419." [215]

THE QUICKSILVER MINING COMPANY,
ADJOURNED MEETING—July 20th, 1910.

Present—Messrs. Nones, Frank, Benedict, Stern,
O'Brien and Whicher.

The minutes of the previous meeting were read and on motion approved.

The general condition of the mine, at the present time was discussed, and the general policy of the Company was approved.

On motion, adjourned.

M. A. BOWE,
Secretary. [216]

“THE QUICKSILVER MINING CO. AD-
JOURNED MEETING—August 17, 1910.

Present—Messrs. Nones, Frank, Swanye, Stern,
Whicher and Benedict.

The Minutes of the previous meeting were read and approved.

* * * * * * * *

On motion of Mr. Benedict seconded by Mr. Whicher, the following resolution was adopted.

The President is authorized to sell up to 1400 acres of land belonging to the Company, it being understood that whatever sale of property is made all the mineral and other rights would be reserved to the Company.

The lands under consideration do not comprise the best lands owned by the Company and the President is authorized to fix a minimum price of not less than \$65 per acre for these lands which is approximately the value of same. It is possible that a better price may be realized. * * * "

**"THE QUICKSILVER MINING COMPANY
SPECIAL MEETING—September 7th, 1910.**

A special meeting of the Board of Directors of the Quicksilver Mining Co. was held on the above date at 2:30 P. M.

Present—Messrs. Nones, Frank, Stern, Benedict,
Whicher, Blochley and O'Brien.

On motion, the minutes of the previous meeting were not read.

The President having returned from a visit to the mine, read a report as to conditions, and

On motion of Mr. Whicher, duly seconded by Mr. O'Brien, the following resolution was adopted. The President is hereby authorized to sell up to 1250 acres of land as designated by [217] him, at to-day's meeting, at the price offered, to wit—\$45.00 per acre, and that in making this sale he is further authorized to obtain the necessary abstract of title on all such lands as conditioned. It is understood that a commission not to exceed 5% is to be paid when deed is passed, and amount of sale is received.

On motion of Mr. O'Brien, seconded by Mr. Whicher the following resolution was also adopted. The President was authorized to sell 25 acres of land to a man named Caseli for \$2000 net.

On motion the meeting adjourned.

M. A. BOWE,
Secretary."

"THE QUICKSILVER MINING COMPANY
POSTPONED MEETING—September 22d,
1910.

Present—Messrs. Nones, Frank, Swayne, Stern,
Benedict, Whicher, Blochley and
O'Brien.

The minutes of the previous meeting were read and approved.

On motion of Mr. Whicher, seconded by Mr. Stern, the following resolution was adopted. The President is authorized to make a sale of 800 acres, or thereabouts, of land, as presented, at to-day's meeting, under the advice and direction of the Company's counsel, and the contract as read is to be made a part of the minutes of this meeting; he is also authorized to sell 25 acres of land to a man named Caseli.

On motion of Mr. O'Brien, seconded by Mr. Stern, the President was authorized to make contract for the rebuilding of No. 3 furnace." [218]

“ADJOURNED MEETING THE QUICK-SILVER MINING COMPANY—November 16, 1910.

Present—Messrs. Nones, Frank, Swayne, Stern, Whicher, Blochley, O’Brien, Cole and Mr. Aaron, the Company’s counsel.

On motion, duly made and approved, the sale of approximately 25 acres of land to a man named Caseli was rescinded.

On motion duly made and seconded, the following sales were confirmed and ratified.

Sale of 26.03 acres *fo* Elia Girogi for the sum of \$2,000, of which \$1,200 is cash, and the balance represented by Mortgage of \$800 due one year from date of sale, at 6% interest.

Sale to Henry Schumann, 190 acres for \$6,500.

Sale to Annie Gilleran (widow) 25 acres for \$1,250 Rancho Capitancillos.

(All papers pertaining to sales attached herewith.)

Also sale of 1012 69/100 acres to Messrs. W. S. Clayton, A. H. Marten, A. R. Chace, and E. Schillingsburg, as per contract herewith attached.

At a meeting held on September 22, 1910, the President was authorized to close contract with Mr. Scott for the rebuilding of No. 3 furnace at a cost of \$7,800. When the President was at the mine in October, 1910, he arranged with other parties for the rebuilding of No. 3 furnace at a cost not to exceed \$4,500.

* * * * *

The President reported to the Board of Directors

the advisability of selling tracts of lands embracing 260 acres, being part of Rancho San Vincente, and adjoining to the South property [219] sold to Messrs. W. S. Clayton, A. H. Marten, J. R. Chace, and E. Shillingsburg, and approximately 100 acres being part of Rancho Capitancillos, and adjoining to the north and east property belonging to Annie Gilleran, at prices respectively at not less than \$75. per acre for Rancho San Vincente, and \$60. per acre for Rancho Capitancillos—it being the opinion of the directors that it is best to dispose of lands of the Company, not needed for mining purposes.

On motion of Mr. Blochley, seconded by Mr. Whicher it was resolved that the President be authorized to sell the property as outlined above.”

* * * * *

NOW THEREFORE be it resolved that Charles A. Nones, the President of this corporation and M. A. Bowe, the Secretary of this corporation, be and they are hereby authorized, empowered and directed to make, execute and deliver to the said W. S. Clayton, A. H. Marten, J. R. Chase and E. Shillingsburg, a good and sufficient deed conveying to them the said property in the name of this corporation, under it a corporate seal and as its corporate act and deed which is in the words and figures following, to wit: * * * ”

The minute-book shows that the regular monthly meeting of the directors, called on December 14, 1910, was postponed as the president was leaving for California, and that thereafter no meetings of the board of directors were held until March 22, 1911. [220]

“THE QUICKSILVER MINING COMPANY
SPECIAL MEETING—March 22, 1911.

Present—Messrs. Nones, Frank, Swayne, Stern,
Blochley, O’Brien and Moyer.

On motion, the reading of the minutes of the previous meeting were dispensed with.

On motion, duly approved, the sale of ten (10) acres at \$150 per acre to John Mondragon was ratified and confirmed; also sale of 153.98 acres to Ellen A. Bowles and George W. Bowles for \$7,000; also sale to Henry Schumann for \$1,500.

On motion of Mr. Swayne, seconded by Mr. O’Brien, it was moved and approved that the matter of dealing with the Eureka Company be left to the President with power to act.

On motion, duly made and approved the board ratified and confirmed the action of the President concerning a water contract entered into between the Quicksilver Mining Company and the County of Santa Clara, State of California, and dated February 21, 1911.

The reports of the mine for the month of February were read.

Meeting adjourned until March 24, 1911.”

“Regular Monthly Meeting, April 12, 1911.

Present: Messrs. Nones, Frank, Swayne, Stern,
Whicher, Blochley and O’Brien.

Reading of previous meeting read and approved.

The president read a letter which he had received regarding the “paint” matter and moved that Mr. Whicher employ the services of an expert to investigate this paint matter and report at next meet-

ing. This motion was duly seconded. [221]

The President was authorized to negotiate for the purchase of an Aerial Tram, a second-hand one, at a cost not to exceed \$1,500.

The President was also authorized to confer with our attorney, Mr. Aaron, with reference to changing the fiscal year from April 30th to December 31st.

The matter of repairs to the large house was discussed and the President is to submit at next meeting approximate cost of repairs.

The resignation of Mr. J. H. Benedict was read and accepted.

On motion, meeting adjourned."

**"SPECIAL MEETING THE QUICKSILVER
MINING COMPANY—June 5, 1911.**

Present—Messrs. Nones, Frank, Swayne, Whicher,
O'Brien, Blochley and Stern.

On motion of Mr. C. A. Nones and seconded by Mr. Whicher, the date of the fiscal year was changed from April 30th to December 31st. The annual meeting to take place as stated in the charter and By-Laws of the Company.

On motion of Mr. Swayne duly seconded by Mr. Whicher, the President was authorized to have Mr. Aaron, the Company's counsel, prepare a Resolution re. California Power Company, to be submitted to the Directors at the next meeting.

On motion, duly seconded, Messrs. Nones and Whicher were appointed a committee of two to see Mr. Aaron regarding the Paint situation and report at the next meeting of the Board. [222]

The President was authorized to prepare the an-

nual report in such form as he deemed advisable.

The President reported that the cost of rebuilding No. 3 furnace was \$4,884.20 instead of \$4,500, as voted, and on motion of Mr. Whicher, duly seconded, the total cost was approved.”

“THE QUICKSILVER MINING COMPANY
ANNUAL MEETING OF STOCKHOLD-
ERS.

New York, June 21, 1911.

The annual meeting of the stockholders of The Quicksilver Mining Company was held at the office of the Company on June 21st, 1911, at 1 P. M., and in accordance with the By-Laws of the Company, Chas. A. Nones, President, presided as Chairman.

The Chairman read the annual report of Mr. J. F. Tatham, Treasurer and General Manager, and also of the President, and on motion of Mr. Hollinger, seconded by Mr. Velsor, all acts of the officers and directors of the Quicksilver Mining Company during the past year, were ratified and confirmed.

* * * * *

At 2 o'clock P. M. the Chairman announced that in accordance with the By-Laws the annual election of directors would then be had. An election of eleven directors of The Quicksilver Mining Company to serve for the ensuing year was then held and the result of the election is shown by the following certificate.

New York, June 21, 1911.

We, the undersigned, hereby certify that at the annual election of The Quicksilver Mining Com-

pany held this day, there were represented in person, or by proxy, 41,619 votes, and each of the following named, having received the whole number of votes [223] cast, namely 41,619, were duly elected directors in accordance with the By-Laws—A. H. Swayne, G. Frank, C. A. Nones, B. F. Cole, C. A. Stern, L. E. Whicher, J. B. O'Brien, A. E. Blochley, J. F. Tatham, Edwin Palmer, M. A. Bowe.

(Personally signed)

CHRISTOPHER C. SLEESMAN,
JOHN JOS. COWLEY,

Inspectors of Election.”

“New York, Sept. 20th, 1911.

SPECIAL MEETING BOARD OF DIRECTORS
THE QUICKSILVER MINING CO.

Present—Messrs. Nones, Frank, Swayne, Whicher,
Blochley, O'Brien, Cole and M. A.
Bowe.

Minutes of previous meeting read and approved.

The president read the following paper on the
“Paint” situation:

PAINT.

Mr. Blochley advises me that a certain expert connected with the Standard Oil Co. as chemist, is of the opinion that our paint is a first-class article and can be disposed of at from \$28 to \$32 per ton allowing liberal charges for ingredients and a freight rate of \$8 per ton from the Pacific Coast to Atlantic Seaboard, and other incidental costs. This paint can be put in New York at a cost not to exceed \$15 per ton.

During my stay out West I carefully considered

the different items embracing the cost of the plant and found that we can use many pieces of machinery that we have on hand and are not now being used, and no chance of any use being made of same in the future. The total cost of this plant will not exceed the sum of \$8,000 and will grind and finish 40 tons of paint of daily. [224]

Mr. Smith, of Messrs. Smith, Emery & Co., advises me that he can obtain the services of a first-class superintendent, who understands the business, at a yearly salary of \$1,500.

I advise that this party's application be considered, as a recommendation from Smith, Emery & Co. entitled a man to more than careful consideration.

I have given orders to finish 150 lbs. of the slag and to have same made into paint, which I believe has been done by this time, and it is my intention to have our buildings painted with same so as to test the value of this article both in wet weather as well as dry.

(Personally signed)

CHAS. A. NONES,

President.

—and on motion of Mr. Swayne, seconded by Mr. Whicher, the president was authorized to expend not more than \$8,000 for the erection of the paint mill, and to take such steps as might be necessary, under the advice of our counsel, for the formation of a company to conduct such business with the understanding that all of stock is the property of the Quicksilver Mining Company. Motion carried.

The following paper was read regarding furnaces and was approved by the Board. (See page 338.)

The President then read a report on Water conditions (see page 339), and on motion of Mr. Whicher, duly seconded, it was resolved that the officers of the company be authorized to transfer to the California Power Company all the water rights owned by the Quicksilver Mining Company, together with a lease of the pipes of the county of Santa Clara, said lease being for a term of fifty (50) years and in exchange therefor to receive all stock and other securities of the California Power Co.

FURNACES.

Nos. 1 and 8 are closed down for repairs. We are now [225] burning 83 tons instead of 140 tons our usual amount.

#1 Furnace has about 250 Tiles broken and I noticed it was not roasting thoroughly; also the condensers are in bad shape requiring new cement work and fire bricks. I ordered the amount of tiles necessary, at a cost of \$1.35 per tile, and although this work will cost us in the neighborhood of \$1,500 and will take about a month to complete, it will nevertheless pay us to put this furnace in first class condition as it handles the best run of our large ores. This furnace has not been repaired for something like 15 years.

#8 is closed down for about 2 weeks for repairs and will cost \$600 to 800. This furnace also needs new tiles and cement work, and when repaired these furnaces will last for a long time without any further repair work.

To pay for these improvements, the condensor walls of #1 have been scraped, from which operation we recovered 29 flasks of silver. Up to the time of my leaving, #8 condensers had not been scraped, but I believe we will recover fully 40 flasks from both these furnaces, which could only have been obtained by closing same down.

(Personally signed)

CHAS. A. NONES,
President.

WATER.

Owing to the contract which we have with the county, it entitled us to lease all pipes for a term of 50 years from date we elect to lease same, subject to a donation of 100,000 gallons of water per day to the county. I recommend that as soon as these pipes are properly installed that this company notify the county of its intention to lease said pipes and this company should then transfer to the water company which is now in existence all of the water rights receiving in payment therefor all the stock of the [226] water company.

My reason for this recommendation is as follows: We can undoubtedly connect with not less than one hundred users along the present line of pipes, and my reason for this estimate is that one of the supervisors advised me that when the county entered into its last contract with us, it disconnected upwards of 40 users of water who had unlawfully connected with the county pipe. The laws of California state that a company may charge \$12.50 for each party connected with the main line, and the rate now being

charged for water by the San Jose Water Co. is 25 cts. for the first 10,000 gallons, and 20 cts, for *ever* 10,000 gallons thereafter.

We have adverse possession to 3,000,000 gallons water per days, and although we could not supply this amount during the dry season without building another dam, we nevertheless can supply between 1,300,000 gallons and 1,700,000 gallons water per day, as the water supply was gauged during the entire month of August and showed this amount going through the reservoir pipe.

In all these calculations for supply the water is first passed over the service wheels and is there transferred into power, after which it is then used for household and other purposes.

The San Jose Water Co. own every stream in the Santa Clara valley outside of the Alamitos. This is the stream to which I refer and which we have carefully safeguarded in all of our property sales. It is the only stream of commercial value upon our property, and it is my opinion that outside of receiving a small return from the consumers, possibly \$3,000 or \$4,000 per year, the San Jose Water Co. knowing that if a dam of sufficient depth were built upon our property it would store up sufficient water to supply 10,000,000 gallons of water per day; that they would then [227] rather buy our rights at more than a fair price, allowing us to retain the power privileges than to run the chance of our be-

coming competitors against them in the water supply business.

(Personally signed)

CHAS. A. NONES,
President.

On motion of Mr. Whicher, duly seconded, and approved, the following motion was ratified that—

The President is therefore authorized to sell and transfer these securities at a price of not less than One Hundred and Fifty Thousand Dollars (\$150,000.00) in cash or its equivalent, reserving however, to The Quicksilver Mining Company the right for all power to carry on its business now and in the future and for not less than 200,000 gallons of water per day.

(Personally signed)

M. A. BOWE,
Secretary.

The President then read a paper regarding an Electric Road to be built as follows (see page 342), and on motion of Mr. Whicher and seconded, it was resolved that before taking action on an electric road to be built from San Jose to the mine, that the President furnish a complete specification showing itemized costs, possible earnings, etc., to be submitted at a future meeting of the Board. Mr. O'Brien stated that he knew a competent engineer who could furnish such a report, and he was requested to engage same.

Our maximum transportation tonnage has a daily capacity of not in excess of 20 tons, which we haul

7½ miles at cost of 60 2/10 cts, per ton. For this service we were paying last year \$1.25 per ton, and this saving has been effected by ownership of our teams. All of which has been paid for.

In the near future, we will have to consider the handling of not less than 60 tons daily and possibly 100 tons. We have [228] reduced the cost of transportation as low as can be done so that an increased tonnage will force us to purchase additional teams, and will permit of no saving. Our calculations of hauling is based on 6 horses for every 8 tons.

Only hauling 60 tons daily would cost us about \$37.00 or about \$12,000 per year. In addition to this amount, we are constantly paying for the hauling of our groceries from San Jose to the mine, and we haul about 25 tons monthly, at a cost of about \$4.00 per ton. Our entire hauling charges and feed bills amount to about \$15,000 per year.

I submit the proposition to the Board regarding an Electric Road to be built from San Jose to the Furnaces. There have been several meetings on this matter with the residents of the Valley, who are unanimously in favor of this undertaking, and have so far subscribed in cash about \$10,000. This being a donation for which they will receive neither stock nor bonds of the proposed road. I believe that this donation will amount to \$15,000 before the road is built.

Besides there has been granted to me personally, for about ¾ of the distance of a private right of way of 20 ft. width, and also sufficient land for turnouts

and stations. The balance of the right of way necessary will have to be acquired from the county and will cost a few hundred dollars.

I am of the opinion that if a company were formed to operate and build this line that the line could be built by a certain contractor with whom I have talked in San Jose, upon the following terms:

Original cost of road would not exceed \$110,000, to which would be added 10% for profit, and for this the contractor would receive 6% bonds of this Railroad Co., less amount of cash [229] donated by residents. Said bonds to be guaranteed principal and interest by the Quicksilver Mining Co.

The cost of hauling our own freight over this line this way would be very small. A 40-ton car as a trailer could be attached to any regular passenger car without further charge, and in addition to our saving for transportation, which will be in the neighborhood of over \$15,000 per year, we would also be able to carry passengers, haul freight and express packages for residents along the line.

A close calculation of the population between San Jose and Almaden gauging the same for a distance of a mile east and west along the proposed line shows about 5000 people also three schools with a daily attendance of 150 scholars.

Also beg to call your attention to the benefits accruing to us from this electric road. Our acreage along the proposed lines is composed mostly of hills which are nothing but grazing lands and worth not over \$20 per acre. Should this line be built these hills

would be desirable building sites, we retaining our mineral rights, as has been the case in similar localities, to wit, Los Gatos and Saratoga, two places which are situated from 6 to 7 miles of our property.

We also own 128 acres of land along the proposed line which we could not sell for \$48 per acre for agricultural purposes last year. This land is finely situated for a townsite, and although we have sold 10 acres at \$110 per acre, we still have sufficient left to warrant setting out this land in $\frac{1}{2}$ acres plots which could be sold easily at \$150 per $\frac{1}{2}$ acre plot.

This proposition is worthy of the most serious consideration. I have devoted several months to it, and have obtained the approval of the majority of the property owners whose lands are along the proposed line of railway.

(Personally signed)

CHAS. A. NONES,

President. [230]

The regular monthly meeting called for October 11, 1911, was adjourned because no quorum was present, and thereafter no meeting of the Board of Directors was held until March 18, 1912, because of a want of a quorum at each of the regular monthly meetings.

“Mar. 18, 1912.

“THE QUICKSILVER MINING COMPANY.

Special meeting of the Board of Directors, Present—G. Frank, A. H. Swayne, C. A. Stern, L. E. Whicher, A. E. Blochley and M. A. Bowe.

On motion of Mr. Swayne, duly seconded, the resolution adopted by the Board of Directors at a special

meeting held at the company's office, No. 45 Broadway, New York, on Sept. 20th, 1911, regarding the sale of the company's water rights was rescinded at to-day's meeting, and on motion of Mr. Whicher, and seconded by Mr. Swayne, the following resolution was adopted in its place:

“Resolved that the officers of the company be authorized to transfer to Senonac Power Company, all the water rights owned by the Quicksilver Mining Company, together with a lease of the pipes of the county of Santa Clara. Said lease being for a term of fifty (50) years, and in exchange therefor to receive all stock and other securities of the Senonac Power Company, and the President is therefore authorized to sell and transfer these securities at a price of not less than Two Hundred Thousand Dollars (\$200,000.00) in cash or its equivalent, reserving, however, to the Quicksilver Mining Company, the right for all power to carry on its business now and in the future, and for not less than 200,000 gallons of water per day.

(Personally signed)

M. A. BOWE,

Secretary.

On motion, meeting adjourned.” [231]

“SPECIAL MEETING OF THE BOARD OF
DIRECTORS OF THE QUICKSILVER
MINING COMPANY—May 1, 1912.

Present—C. A. Nones, G. Frank, C. A. Stern, A. H.
Swayne, B. F. Cole, L. E. Whicher, A.
E. Blochley and M. A. Bowe.

On motion the reading of the minutes of the pre-

vious meeting were dispensed with.

Moved and approved that the President's action in ordering the sum of approximately \$3,000, to be charged to March expenses, said sum representing the amount of money actually expended upon right of way, surveys and cutting down grade for the proposed San Jose and Almaden Road, all of which stock will be owned by the Quicksilver Mining Company.

Further resolved that the President's action be approved in receiving the stock for account of The Quicksilver Mining Company from the San Jose & Almaden Road for the full amount of these expenses."

"May 10, 1912.

"Adjourned meeting of Directors of the Quicksilver Mining Co. Present: Chas. A. Nones, G. Frank, A. H. Swayne, C. A. Stern, L. E. Whicher, A. E. Blochley, E. F. Coles and M. A. Bowe.

That the Quicksilver Mining Co. shall lease to Chas. J. Vath and C. P. Anderson for a term of eighteen months commencing April 1, 1912, at a monthly rental of \$160, payable on the 10th day of each and every month, with the privilege of a renewal by the parties leasing for an additional 3½ years, at a monthly rental of \$200, and a further privilege by the parties leasing for an [232] additional 5 years at the same rate. All other terms of sale and agreement being the same as approved May 1, 1912.

On motion duly made and seconded the sale of 92.40 acres to A. L. Brassey for \$6,770, also sale of about 2½ acres to Hacienda School District for \$500,

were approved and confirmed.”

“THE QUICKSILVER MINING COMPANY,
ANNUAL MEETING OF STOCKHOLDERS
—New York, June 19, 1912.

The annual meeting of stockholders was held at the office of the company on June 19th, 1912, at one P. M., and in accordance with the -By-laws of the company, Chas. A. Nones, President, presided as Chairman. The Chairman read the annual report of Mr. J. F. Tatham, Treasurer and General Manager, and also of the President, and on motion all acts of the officers and directors of the Quicksilver Mining Co. during the past year were ratified and confirmed.

We, the undersigned, hereby certify that at the annual election of the Quicksilver Mining Co. held this day, there were represented in person or by proxy, 60,309 votes, and each of the following named, having received the whole number of votes cast, namely, 60,309, were duly elected directors in accordance with the by-laws. Chas. A. Nones, A. H. Swayne, C. A. Stern, B. F. Cole, L. E. Whicher, A. E. Blochley, J. F. Tatham, D. M. Burnett, S. Y. Baylis, Martin Conboy and M. A. Bowe.

(Personally signed)

JOHN J. COWLEY,
C. C. SLEESMAN,
Inspectors of Election.

(Personally signed)

CHAS. A. NONES,
Chairman.”

That no regular meetings were had of the Board of Directors between June, 1912, and December 12, 1912, because of a lack of a quorum of the Board of Directors. [233]

“Dec. 12, 1912.

REGULAR MONTHLY MEETING OF THE
DIRECTORS OF THE QUICKSILVER
MINING CO.

Present—C. A. Nones, A. H. Swayne, L. E. Whicher,
A. E. Blochley, S. Y. Baylis and M. A.
Bowe—also Mr. Martin Conboy, the
company's attorney.

Reading of minutes of previous meeting dispensed with by roll call. Voting aye on above resolution—A. H. Swayne, L. E. Whicher, S. Y. Baylis, A. E. Blochley, M. A. Bowe, C. A. Nones.

The President then made the following statement: Having been informed that a number of stockholders desire a special meeting and recognizing the rights of all stockholders, I move that the following resolution be unanimously adopted—That a committee consisting of Messrs. A. H. Swayne, S. Y. Baylis and C. A. Nones, working in conjunction with the attorney for the company, Mr. Martin Conboy, of Messrs. Griggs, Baldwin & Baldwin, be appointed to investigate a request purporting to represent more than one-quarter interest of stockholders and that pursuant to the by-laws of this company, upon investigation of this statement should same be verified, that a special meeting of stockholders be called. Resolution adopted by a unanimous vote. On roll call voting

aye on above resolution—A. H. Swayne, L. E. Whicher, S. Y. Baylis, A. E. Blochley, M. A. Bowe, C. A. Nones.

Mr. M. E. Harby then presented to the Board of Directors a request for the calling of a special meeting of the stockholders of the company to act upon the general business of the company representing to be signed by over one quarter interest of stockholders of the Quicksilver Mining Co., and signed by various persons on four (4) separate sheets, as follows:

* * * * *

[234]

Mr. Whicher requested from the President, a statement of the affairs of the company since the annual report which was made as of December 31st, 1911. The President stated that the reports were not complete on account of Mr. Tatham's absence on a vacation, and that the October and November statements had not been received, but that they had been telegraphed for and they would undoubtedly be received within a day or so. * * * "

“ADJOURNED MEETING BOARD OF DIRECTORS, THE QUICKSILVER MINING COMPANY—December 18, 1912.

* * * * *

* * * and that a special meeting of all stockholders be called on the second Wednesday in February, 1913, and on motion of Mr. Swayne and seconded by Mr. Baylis, the following resolution was adopted. * * *

On motion of Mr. Baylis and seconded, the resignation of Mr. John Drew as manager of the mine was accepted.

* * * * * * * *

[235]

“January 8, 1913.

Regular monthly meeting adjourned. Lack of quorum.

(Personally signed.)

M. A. BOWE,
Secretary.

February 11, 1913.

Regular meeting called February 11th in place of February, 12th, at 3:30 P. M.

Present—C. A. Nones, M. A. Bowe, J. F. Tatham.

Mr. Tatham having come on from California to present the annual report to the Board of Directors and to report on any matters concerning which the Board might desire information.

There being no quorum, the meeting adjourned.

(Personally signed)

M. A. BOWE,
Secretary.

February 18th, 1913.

Special meeting of the Board of Directors held at the office of the Company at 3:30 o'clock P. M.

Present—C. A. Nones, A. H. Swayne, B. F. Cole, A. E. Blochley, S. Y. Baylis, M. A. Bowe, and Mr. Conboy, the company's attorney.

Whereas at the special meeting of stockholders of The Quicksilver Mining Company, held on Febru-

ary 15th, 1913, the following Resolution was adopted:

And whereas the directors on consideration of said Resolution find it advisable for the best interests of the corporation to investigate the books of accounts of the corporation at the place where its business is conducted thereby not suspending its operation during the period while such books and vouchers are under examination, and [236]

Whereas the directors in an effort to comply with the spirit of said Resolution inasmuch as they provide for an examination of the Company's books of accounts and of its physical properties are desirous to have such examinations made in the most practical manner and with the least interference in the conduct of the company's business, now further.

Resolved that the Secretary communicate with the Committee referred to in said resolution, as follows:

1. Inquire for what period the examination of the books of account and vouchers is to cover in order that a starting point for such investigation may be determined by the committee.
2. Suggest the appointment of California representatives of some firm of Certified Public Accountants in the City of New York, such for instance as—

Haskin & Sells,

Price, Waterhouse & Co.,

Marwick Mitchell Peat & Co.,

Suffern & Son.

to make an examination of the books, vouchers, etc., at the office of the Company at New Almaden, Calif., where its business is conducted, for the period fixed by the aforesaid committee.

3. Suggesting the appointment of a competent mining engineer to examine and make a report upon the mines and other physical properties of the corporation and during the period while the examination of the books is being conducted.
4. Requesting the committee to give such instructions to the accountants and engineers respecting the particular features of the investigation that they desire definite and specific information upon.
5. Requesting said committee to inform the directors that part, if any, of such expenses of such investigations should be borne by the corporation, inasmuch as respective resolutions make no provision for the payment of said investigations.

On motion, meeting adjourned.

(Personally signed)

M. A. BOWE,
Secretary." [237]

Defendant's Exhibit No. 2—Annual Report of the Quicksilver Mining Company, for the year 1909–1910, etc.

EXHIBITS REFERRED TO IN DEPOSITIONS.

Defendant's Exhibit "No. 2" is the printed Annual Report of The Quicksilver Mining Company

for the year 1909-1910, and purports to be a review of the operations of the Company for the fiscal year ending April 30, 1910.

It also sets forth the Annual Report of J. F. Tatham, General Manager, and a financial statement of the Company's affairs for the year submitted to the stockholders by Charles A. Nones, President.

This report deals with the Company's affairs but apparently has no relevancy to any question involved on this appeal. [238]

Defendant's Exhibit No. 3—Excerpts from Printed Annual Report of Quicksilver Mining Company for 1910-1911.

EXHIBIT REFERRED TO IN DEPOSITIONS.

Defendant's Exhibit "No. 3" is the printed Annual Report of The Quicksilver Mining Company for the year 1910-1911, and purports to cover the Company's affairs for the fiscal year ending April 30, 1911.

This report contains a general statement of the financial affairs of the Company for the fiscal year. It is not itemized and there is no memorandum therein referring to or concerning plaintiff in any manner, or to any other matter connected with his cause of action, or his right to recover herein.

The report is submitted by Charles A. Nones, President, and contains the financial report and report of the Company's mining property submitted by J. F. Tatham, Treasurer and General Manager. [239]

**Defendant's Exhibit No. 4—Excerpts from Printed
Report of the Operations of the Quicksilver
Mining Company, etc.**

EXHIBIT REFERRED TO IN DEPOSITIONS.

Defendant's Exhibits "No. 4" is a printed report of the operations of The Quicksilver Mining Company for a period of eight months from April 30, 1911, to and including December 31, 1911.

Among other things it includes the report of Charles A. Nones, President. That part relevant to this case is as follows:

"The change in the fiscal year was made so as to permit the closing of our books at the end of each calendar year, thus conforming to the regulations of both the Federal and State laws, and at the same time eliminating the necessity of again opening and closing our books so as to render our stockholders a report as of April 30 of each year. * * * We were prevented from making a larger production for the eight months covered by this report on account of the lack of transportation facilities. This I expect to overcome as this Company has within the last few months obtained the necessary rights of way and franchises for an electric line to be owned entirely by your Company and which will extend from San Jose to the town of New Almaden, where the furnaces are located. By this means we will be able to save considerable cost in our transportation and at the same time it will be possible for us to increase our hauling facilities, thereby also increasing our production. This proposed line

will also transport passengers and express matter for the adjacent territory. [240]

Another benefit arising from the construction of this line will be the opening up of our lands, most of which can be developed and sold at a far higher price than would be obtained were this road not in operation.

I also beg to report that negotiations are now pending for the sale of the water rights belonging to this Company at a price that will give this Company a large working capital for whatever future developments may be contemplated.

I also wish to advise you that your directors have authorized the building of a paint mill with a capacity of 20 tons per day. This mill will be one of the by-product divisions of your Company, for the use of waste after the quicksilver has been thoroughly extracted therefrom and mixed with some ingredients under a certain process will make as good, if not a better, metallic paint than can be found on the market at present. This company will be able to manufacture this paint at a very low cost and at the present market prices will be able to make large profits.

Respectfully submitted,
CHARLES A. NONES,
President."

The report also includes the general financial statement of the Mining Company during that period, as submitted by J. F. Tatham, treasurer and general manager.

Nothing that appears in the financial statement,

as submitted by the treasurer and general manager, relates or refers to the plaintiff or his cause of action sued upon herein. [241]

Defendant's Exhibit No. 5—Excerpts from Printed Report of Operations of Quicksilver Mining Company.

EXHIBIT REFERRED TO IN DEPOSITIONS.

Defendant's Exhibit "No. 5" is a printed report of the operations of The Quicksilver Mining Company for a period of twelve months from December 31, 1911, to December 31, 1912.

This report contains a general statement of the financial affairs of the Company for the year. It is not itemized and there is no memorandum therein referring to or concerning plaintiff in any manner, or to any other matter connected with his cause of action, or his right to recover herein.

The report is submitted by Charles A. Nones, President and contains the financial report, and the report of the company's mining property submitted by J. F. Tatham, Treasurer and General Manager. [242]

Defendant's Exhibit No. 6—Charter and By-laws of the Quicksilver Mining Company.

EXHIBIT REFERRED TO IN DEPOSITIONS.

Defendant's Exhibit "No. 6" is a copy of the Charter and By-Laws of The Quicksilver Mining Company, incorporated by the State of New York, April 10, 1866, with a capital stock of ten million dollars, divided into one hundred thousand shares of the par value of \$100 each.

The Act incorporating the company is as follows, to wit:

“CHAPTER 470.

AN ACT TO INCORPORATE THE QUICK-SILVER MINING COMPANY.

Passed April 10, 1866.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1: Samuel G. Arnold, William Bond John A. Collier, Edwin Hoyt, Edwin J. Nightingale, Samuel L. M. Barlow, George J. Forrest, John Elliot, and their associates, be and they hereby are created a body politic, by the name, style and title of “The Quicksilver Mining Company” and by such name and title shall have perpetual succession, and shall be capable of suing and being sued, impleaded, and being impleaded, and of granting and receiving, in its corporate name, property, real, personal and mixed, and of holding and improving lands in California or elsewhere, and to obtain therefrom any and all minerals and other valuable substances, whether by working or mining, leasing or disposing of privileges to work or mine such lands, or any part thereof, and to erect houses and such other buildings and works as may [243] properly appertain to said business, and to use, let, lease or work the same, and to dispose of the products of all such lands, mines and works as they may deem proper.

Section 2. The said company shall have power to make such By-Laws as they may deem proper to enable them to carry out the objects of the corpora-

tion, and the same to alter, amend, add to, or repeal at their pleasure, provided that such By-Laws shall not be contrary to the constitution of this State, or the provisions of this act, and to adopt a common seal, and the same to alter at pleasure, and to issue certificates of stock, representing the value of their property in such form and subject to such regulations as they may from time to time, by their by-laws, prescribe, and to regulate and prescribe in what manner and form their contracts and obligations shall be executed.

Section 3. The incorporators named in this act shall elect persons to serve as directors, a majority of whom shall constitute a quorum for the transaction of business, and shall hold their offices until their successors shall have been elected in accordance with the by-laws.

Section. 4. It shall be lawful for said company to establish the necessary offices for the business of the company wherein their business is located, and to have their principal office in the United States, in such place as they may deem expedient, at which place it shall be lawful to hold all meetings for the transaction of the business of the company.

State of New York,

Office of the Secretary of State.

I have compared the preceding with the original law on file in this office, and do hereby certify that the same [244] is a correct transcript therefrom, and of the whole of said original law.

GIVEN UNDER my hand and the seal of office of the Secretary of State, at the City of Albany, this

tenth day of April, in the year one thousand eight hundred and sixty-six.

[Seal]

ERASTUS CLARK,

Deputy Secretary of State."

"BY-LAWS

of

THE QUICKSILVER MINING COMPANY.

Incorporated by the State
of New York.

"I. An annual meeting of the stockholders shall be held in the City of New York, at such place therein, as may be designated in the notice for such meeting, on the third Wednesday in June, in each year, at one o'clock P. M. Notice shall be given of the time and place of holding such meeting by public advertisement, in two newspapers published in the City of New York, at least ten days prior thereto. The President shall present to said meeting, on behalf of the Board of Directors, a report of the affairs of the company for the year preceding.

II. The annual meeting of directors shall be held at the same place on the same day, between the hours of two and three P. M. * * * [245]

III. The common seal of this Company shall have upon its face * * * .

IV. Certificates of stock amounting to the sum of ten millions of dollars shall represent the value of the property of the corporation and the capital stock shall be divided into one hundred thousand shares of one hundred dollars each. Certificates of stock upon which Five Dollars per share shall be paid, shall be distinguished as preferred stock.

V. Said certificates shall be in such form as shall be prescribed by the Board of Directors.

VI. All certificates shall be registered on the books of the Company when issued. No certificate shall be transferable except * * * .

VII. The contracts and obligations of the Company shall be made and executed in such manner and form as the Directors may determine.

VIII. The corporate powers of the Company shall be exercised by a Board of Directors, and such officers and agents as they shall appoint. The Board of Directors shall consist of eleven persons, each of whom shall be a stockholder within one month after his election. They shall elect a president, vice-president, treasurer and secretary to hold office during the pleasure of the Board, and shall have the power to make rules and regulations not inconsistent with the By-laws of the Company and administer, alter or change the same; except that they shall have no power to do anything creating or causing any stockholder to be personally liable for the debts of the corporation.
[246]

IX. The said Directors shall hold their office until the next following election or until * * * .

X. The principal office of the Company shall be in the City of New York, and the Board of Directors may, in their discretion, * * * .

XI. The preferred stock shall be entitled to interest at the rate of seven per cent per annum * * * .

XII. The Directors shall hold stated, special or

adjourned meetings at such times and places as they may deem most convenient and consistent with the interests of the Company. At such meetings a majority of all the members of the Board shall form a quorum for the transaction of business. A smaller number than a quorum may adjourn a meeting.

XIII. The Directors shall have power to delegate, from time to time, such authority as they may deem necessary to the officers of the Company, or to any one or more members acting as a committee, in order that the business of the Company may, at all times, be transacted with promptness and dispatch.

XIV. The Directors may from time to time on the credit and responsibility of the Company borrow
* * * .

XV. The Directors shall, at the request of one quarter in interest of the stockholders, call a special meeting of the stockholders to act * * * .

XVI. These By-laws may be altered, amended or repealed, at any regular or special meeting of the stockholders, by a vote of a majority in interest of all the stockholders." [247]

Opinion.

*In the District Court of the United States for the
Northern District of California, Second Division.*

No. 15,752.

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY,
Defendant.

Memorandum Opinion.

BLEDSON, District Judge:

Insistent pressure of other matters awaiting my determination precludes anything but a brief résumé of my conclusions in this case, although I have gone over the evidence submitted and the helpful briefs of able counsel with the care and consideration which the importance of the controversy seems to require.

Under the admissions of defendant's counsel made in court during the progress of the hearing, the only question in the case is as to the liability of the defendant upon the claim for compensation advanced by plaintiff. No evidence was tendered upon the issue as to the value of the services rendered, and counsel for defendant very properly indicated that the only question to be tried was the one of the authority of defendant's president to employ plaintiff and defendant's obligation to compensate him for the services rendered in response to such employment. [248]

Very briefly, the controlling facts as they appeal to me are that, the defendant at the time of the transactions in controversy was, and for more than forty years has been, conducting the operations of its quicksilver mines in Santa Clara County, by means, presumably, of agents and general managers, sent out from, and reporting to, the head office, which was always maintained in the City of New York. During that period, and in fact during all of the time under which plaintiff alleges he was being employed by defendant's president, many thousands of dollars annually were being expended in the prosecution of the business of the corporation, including the mining of quicksilver, the carrying on of a general store, the selling of parcels of its immense property, and the doing of all things which seemed to be necessary or incidental to the consummation of the work in hand. The head offices of the company were in New York, more than three thousand miles away from this, the only property which the company owned. At that property, and apparently having general charge of all its activities, was the president of the corporation, Nones, who seemed to be the chief directive head and force of the corporation, and who was assisted and aided at all times, apparently, by Tatham, the treasurer and general manager of the company, and likewise a director along with the president Nones, who acted at all times under the direction of, but in sympathy with the president and apparently supreme directive head.

There is no doubt but that plaintiff was employed by Nones, the apparent supreme directive head of the

destinies of the corporation, to perform certain services for and in behalf of the corporation; neither is there any doubt but that such employment was had with the knowledge, acquiescence and active participation in all things attending it of Tatham, Nones' [249] treasurer, general manager and codirector. It may be, and probably is, true, although the proof is not entirely clear upon that point, that, the employment of the plaintiff for the purposes indicated by Nones, and for which compensation is sought in this proceeding, was without direct and precise authority emanating from the Board of Directors, and perhaps without knowledge upon their part as to such employment or its consequences. Be that as it may, however, plaintiff as a reasonable man, using reasonable diligence and discretion in the consideration of matters required by him to be determined, was in no wise apprised of this fact, if it be the fact. Under all the circumstances, considering the general course of the business of the corporation, considering the long distance from the head office to where the property was situated, considering the fact that two directors of the corporation were upon the ground, and that they were actively co-operating in the doing of all things which served to render the defendant liable to plaintiff as for compensation for services rendered, and considering the fact that these two men, Nones and Tatham, either together or singly, were apparently clothed by the corporation, more than three thousand miles away, with the control of the destinies and activities of the property belonging to the corporation, there is small wonder, to

my mind, that upon plaintiff being approached by Nones to secure certain options upon land having to do with water rights situate upon defendant's property, and to secure certain other rights of way between the mining property and the nearest large community whereon a railway might be constructed whereby the property of the defendant would be directly benefited and whereby the products of [250] its mining operations might be much more economically conveyed to market, plaintiff should have considered and been justified in considering that ample authority for his employment was lodged in the directive head then upon the ground. As was said by the Supreme Court of Nebraska in *Johnson vs. Milwaukee, etc., Investment Company*, 64 N. W. 1100: "In this case the corporation was located in Milwaukee in the State of Wisconsin. It was formed for the purpose of doing business in Wyoming and most of its business was there conducted. The very fact that the corporation and its general officers held their office at a remote point was an element for consideration. *Rathbun vs. Snow*, 123 N. Y. 343. One might be justified in dealing with a person in apparent management of the business in Wyoming, where the office of the corporation was in a distant state, where he would not be so justified if he found the general office and general officers at or near the place where the business was conducted." *A fortiori*, one might be justified in dealing with a person in apparent management of the business in California, assisted by another person a member of the Board of Directors and general manager of the corporation,

where the office of the corporation was and had been for over forty years conducted and maintained in the city of New York.

It is hornbook law, under the authorities, that an agency sufficient to meet all the requirements of this case might be created either expressly or ostensibly. Under the benign and just rules of the law, an actual agency is not less potent than an apparent one—one created by the negligence—want of ordinary care—of the principal. If the principal deliberately, or because of a want of due diligence upon its part, knowingly or negligently permits its special agent to assume [251] general powers or its general agent to assume powers in excess of the authority conferred, it will not be permitted in a court of justice successfully to maintain that it is not responsible for the acts done and performed by such agent in the furtherance of its business. A very fair statement of the rule, as I have gathered it from the books, is to be found in *St. Louis etc., Company vs. Wannamaker*, 90 S. W. 737, where it was said by the Supreme Court of Missouri that: “Apparent authority is such authority as a reasonably prudent man, using diligence and discretion, in view of the principal’s conduct, would actually suppose the agent to possess.”

It is inconceivable to me how the plaintiff, with the knowledge of the facts above detailed, viewing the apparent paramount authority of Nones, president, director and directive head of defendant’s property, and considering it in relation to and with the equally apparent co-operation, acquiescence and participa-

tion of Tatham, the general manager, and another director of the corporation, would not be justified in arriving at the conclusion that they were possessed of all the authority necessary to employ him for the purposes indicated. See *Dover v. Pittsburg Oil Company*, 143 Cal. 501; *Dickerson v. Colgrove*, 100 U. S. 580; *Southern Pacific Company v. City of Pomona*, 144 Cal. 339, p. 350; *Martin v. Webb*, 110 U. S. 7. The language of the Supreme Court of Colorado in *Witcher v. Gibson*, 61 Pac. 192, is not inopposite. There the Court said, in substance, that the principal is bound to keep himself advised as to the course of his business and to know whether his agent is using the specific authority which is granted to him, and if he is not, to advise the parties with whom he is dealing to no longer transact such business with him. [252]

The claim is made and has been given careful consideration that the doctrine of *ultra vires* as applied to corporate activities is applicable here, and that it, in itself, will suffice to deny plaintiff a recovery. Assuming that the doctrine is applicable at all, still I am in thorough sympathy with the proposition that it has no efficacy in this case, because of the fact that the contract solemnly and deliberately entered into by defendant through its authorized agent, has been fully performed by the plaintiff on his part. It would now be in the highest degree unjust to permit defendant to reap the benefit of whatever advantages may have accrued from the performance of the contract by the plaintiff and then deny to the plaintiff the compensation agreed to be paid, because of the

claim indulged in that the corporation had no power to enter into the contract at all. This conclusion, I think, is sustained by the language and holding of the Supreme Court of the United States. *Eastern B. & L. Association vs. Williams*, 189 U. S. 122.

I do not feel, however, that the doctrine of *ultra vires* is necessarily involved. Plaintiff was not employed to build or operate a railway or to build or operate a power or water plant. He was merely employed to secure options looking to the development of a water supply and water right already on the property of the defendant, and to secure rights of way by deed or otherwise for a railway, leading from defendant's property to the city of San Jose, and the operation of which, both as to carriage of freight and passengers, would presumably and probably directly aid and benefit defendant's property and defendant's business. New corporations were [253] in fact organized, which said corporations were to conduct these respective businesses; but plaintiff was employed, and he rendered his services not in the organization or the conduct or control of such new corporations and new businesses, but in the taking of certain preliminary steps looking to the transaction of these new businesses when the proper and adequate machinery had been provided. In so far as the inceptive features were concerned, however, the preliminary steps had to be taken, and in my judgment were properly taken by the defendant itself, because of the fact that its property and its business was thereby to be benefited. Under the circumstances, therefore, the taking of these neces-

sary preliminary steps was within the competency and the power of defendant corporation, and the plea of *ultra vires* is not sustained. *Brown v. Winnisimmet*, 11 Allen 326; *Fort Worth Civic Company v. Smith Bridge Company*, 151 U. S. 294.

It follows from these considerations that plaintiff is entitled to the relief as prayed for and the appropriate judgment will be entered to that effect.

Receipt of a copy of the within Bill of Exceptions admitted this 2d day of January, 1917.

B. A. HERRINGTON,
Attorney for Plaintiff.

[Endorsed]: Filed Feb. 20, 1917. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [254]

*In the District Court of the United States, for the
Northern District of California, Second Division.*

No. 15,752.

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY, a
Corporation,

Defendant.

Petition for Writ of Error.

To the Honorable WM. C. VAN FLEET, Judge of
said District Court:

Now comes The Quicksilver Mining Company, a corporation, by its attorney, A. H. Jarman, Esq., and respectfully shows:

That on the 2d day of October, A. D. 1916, the Court found a verdict against your petitioner and in favor of said C. P. Anderson, and upon said verdict a final judgment was entered on the 14th day of October, A. D. 1916, against your petitioner, The Quicksilver Mining Company, a corporation.

Your petitioner, feeling itself aggrieved by the said verdict and judgment entered thereon, as aforesaid, herewith petitions the Court for an order allowing it to prosecute a Writ of Error to the Circuit Court of Appeals of the United States, for the Ninth Circuit, under the laws of the United States in such cases made and provided.

WHEREFORE your petitioner prays that a Writ of Error do issue and that an appeal in this behalf to the United States [255] Circuit Court of Appeals, aforesaid, sitting at San Francisco, in said Circuit, for the correction of the errors complained of and herewith assigned, be allowed, and that an order be made fixing the amount of the security to be given by defendant, The Quicksilver Mining Company, conditioned as the law directs, and upon giving such bond as may be required that all further proceedings may be suspended until the determination of the said Writ of Error by the said Circuit Court of Appeals.

A. H. JARMAN,

Attorney for Petitioner in Error.

[Endorsed]: Filed Dec. 5, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [256]

*In the District Court of the United States, for the
Northern District of California, Second Division.*

No. 15,752.

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY, a
Corporation,

Defendant.

Assignment of Errors.

Now comes The Quicksilver Mining Company, a corporation, defendant above-named, and in connection with its petition for writ of error in this cause, makes and files the following assignment of errors in the above-entitled cause and upon which it relies to reverse the judgment entered herein as appears of record:

I.

The Court erred in rendering judgment for plaintiff for the reason that there is no evidence in the case, introduced either by plaintiff or defendant, from which the Court could lawfully find:

(a) That the defendant employed plaintiff to do any work or performed any services for or in its behalf in organizing, or otherwise, the San Jose and Almaden Railroad Company, or the Senonac Power Company, or for or in any other matter or thing.

(b) That defendant's alleged agent, superintendent and [257] president, or either or any of them,

were ever authorized by defendant, expressly or impliedly, to employ plaintiff for any purpose or service whatever connected with or related to any business in which defendant was engaged or had any right to engage.

(c) That defendant accepted said employment, or any employment, or the fruits or benefits of said alleged employment, or any employment or service by plaintiff of any kind or nature whatever with knowledge of all the facts connected therewith.

(d) That defendant, either expressly or impliedly, conferred authority on said Nones to undertake in its behalf the organization of the said railroad company and said power company, or to do anything in its behalf with either or both, or to perform any service of any kind or nature in relation thereto.

(e) That defendant ever held said Nones out as its general agent or representative with authority to bind it in any matter or thing outside of its usual and ordinary business of mining and producing quicksilver.

(f) That defendant ever sanctioned or ratified said alleged employment, or ever sanctioned or ratified said alleged railroad and power enterprises with knowledge of all the facts in connection therewith.

(g) That defendant ever accepted or retained or enjoyed any benefit of any nature or character from either said alleged railroad or power enterprises, or from any alleged services rendered by plaintiff for its benefit.

(h) That defendant ever accepted or enjoyed any benefit from said services, or from any expenditure of money made by plaintiff for its benefit.

(i) That defendant ever accepted or enjoyed or retained [258] any benefit or thing of value as a result of any service performed by plaintiff for its alleged benefit with knowledge on its part that said alleged services or benefit was performed by plaintiff with the expectation in him that he should be compensated therefor by defendant.

(j) That C. A. Nones was defendant's agent, general superintendent and president in the county of Santa Clara, State of California.

(k) That at the time of accepting said employment it was understood and agreed by and between plaintiff and defendant that plaintiff's compensation for said alleged service should be fixed and determined by and between plaintiff and defendant at a period of time when the work, so to be done by plaintiff under said employment, was substantially completed; and that when so completed that plaintiff and defendant should then arrive at a reasonable value of the services so rendered by plaintiff.

(l) That there was or is any amount due from defendant to plaintiff by reason of said alleged services, or for any other cause or reason at all, or that same should become due and payable from defendant to plaintiff at any time.

(m) That plaintiff ever entered upon and undertook said work and services, as required of him by defendant, and in this behalf that defendant did not

require or request plaintiff to *form* any work or services in connection with either the railroad or power enterprises.

(n) That said two corporations were organized for the exclusive benefit of defendant; that defendant was the owner of all the stock in each of said two corporations; that all the stock of said two corporations which stood in the name of persons other than defendant, was held in trust by such other persons [259] for the use and benefit of the defendant and was the property of defendant.

(o) That C. A. Nones was the president, agent and general superintendent of defendant; that said alleged employment of plaintiff was made through him and the said matters and things done and performed by plaintiff for defendant were so done and performed under the instructions and directions of the said C. A. Nones as such president, agent and general superintendent of this defendant.

(p) That the employment of plaintiff, as alleged in his complaint, was the employment by defendant; that the said alleged work and labor performed and services rendered were so performed and rendered by said plaintiff under defendant's employment of said plaintiff.

II.

That said judgment so entered was contrary to and is against law for the reason that there is no evidence:

(a) That said alleged employment of plaintiff by said Nones was within the limits of the authority

conferred upon said Nones as president of the defendant corporation.

(b) That defendant never at any time ever held said Nones out to plaintiff, or to the public, as having authority to employ plaintiff to undertake or to do any work or perform any service in connection with said railroad or power enterprise.

(c) That defendant ever authorized said Nones, either personally or impliedly, to employ plaintiff for any purpose whatever and particularly in connection with said alleged railroad [260] and power enterprises, and in this connection there is no evidence that defendant ever ratified or approved plaintiff's employment by the said Nones after being fully advised of all the facts in connection therewith.

III.

That the said judgment, so entered as aforesaid, was contrary to and is against law because the undisputed evidence in the case conclusively establishes:

(a) That said Nones had no right or authority, express or implied, to employ plaintiff in behalf of the defendant to perform any work or service in connection with said railroad enterprise or said power enterprise, or either of them.

(b) That said alleged railroad enterprise and said power enterprise were and are *ultra vires* and beyond the corporate powers of this defendant.

(c) That defendant never at any time ratified and approved either the said alleged employment of plaintiff by said Nones, or said railroad enterprise, or said power enterprise, after being advised of all

the facts in connection therewith.

(d) That defendant never accepted, received or retained any benefit of any kind or nature from plaintiff's alleged work and services, as alleged in his said complaint, with knowledge of all the facts in connection therewith.

(e) That defendant never ratified the acts of said Nones in employing plaintiff to perform the work and services alleged in his complaint, with full knowledge of all the circumstances. [261]

(f) That defendant never knowingly received and retained the benefit of the alleged contracts entered into by its president with plaintiff, as alleged in plaintiff's complaint.

(g) That defendant did not habitually suffer Nones to exercise powers in relation to any matter outside of the usual and ordinary business in which defendant was engaged, and in this connection the evidence establishes that neither defendant nor its Board of Directors had any knowledge that said Nones had engaged plaintiff to perform any services for defendant in connection with either of said alleged enterprises.

WHEREFORE, said The Quicksilver Mining Company, a corporation, plaintiff in error herein, prays that the judgment of said Court be reversed.

Dated, December 5th, 1916.

A. H. JARMAN,

Attorney for Plaintiff in Error, The Quicksilver Mining Company.

[Endorsed]: Filed Dec. 5, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [262]

*In the District Court of the United States, for the
Northern District of California, Second Divi-
sion.*

No. 15,752.

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY, a
Corporation,

Defendant.

**Order Allowing Writ of Error and Fixing Amount
of Bond.**

Upon motion of A. H. Jarman, Esq., attorney for
defendant, The Quicksilver Mining Company, a cor-
poration, and upon filing a petition for a Writ of Er-
ror and Assignments of Error;

IT IS ORDERED that a Writ of Error be and it
hereby is allowed to have reviewed in the United
States Circuit Court of Appeals for the Ninth Cir-
cuit the judgment heretofore entered herein and that
the amount of the bond on said Writ of Error be
and the same is hereby fixed at twelve thousand
(\$12,000) dollars.

Dated, December 5th, 1916.

WM. C. VAN FLEET,

Judge of the United States District Court, for the
Northern District of California.

[Endorsed]: Filed Dec. 5, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [263]

*In the District Court of the United States, for the
Northern District of California, Second Divi-
sion.*

No. 15,752.

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY, a
Corporation,

Defendant.

Bond on Writ of Error and Supersedeas Bond.

KNOW ALL MEN BY THESE PRESENTS:
That we, The Quicksilver Mining Corporation, a
Corporation, as principal, and National Surety
Company, a corporation, duly organized and exist-
ing under and by virtue of the laws of the State of
New York, and duly authorized to execute bonds
and undertakings in judicial proceedings pending
in the courts of the United States, as surety, are held
and firmly bound unto C. P. Anderson, plaintiff in
the above-entitled action, in the full and just sum
of twelve thousand dollars (\$12,000), lawful money
of the United States, to be paid to the said plaintiff,
C. P. Anderson, his administrators, executors or as-
signs, to which payment well and truly to be made,
we bind ourselves, our successors and assigns, jointly
and severally by these presents: [264].

SEALED with our seals and dated this 23d day of November, A. D. 1916.

WHEREAS, lately at a regular term of the District Court of the United States, for the Northern District of California, sitting at San Francisco, in said District, in a suit pending in said court, C. P. Anderson, as plaintiff, and The Quicksilver Mining Company, a corporation, as defendant, cause No. 15,752 on the law docket of said court, final judgment was rendered against the said defendant in the sum of seven thousand four hundred and eleven dollars (\$7,411), together with interest thereon at the rate of seven per cent (7%) per annum from March 5, 1912, and costs, and the said defendant, The Quicksilver Mining Company has obtained a Writ of Error and filed a copy thereof in the clerk's office of said court, to reverse the judgment of said court in the aforesaid suit, and a citation directed to the said C. P. Anderson, defendant in error, citing him to be and appear before the United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city and county of San Francisco, in the State of California, according to law, within thirty (30) days from the date hereof;

NOW, the condition of this obligation is such that if the above-named The Quicksilver Mining Company shall prosecute its said Writ of Error to effect and answer all damages and costs if it fail to make its plea good, then this obligation to be void, else to remain in full force and virtue. [265].

Said surety further covenants and agrees that in

case of a breach of any condition of this bond that the above-entitled court may, upon notice to it of not less than ten (10) days, proceed summarily in the above-entitled action to ascertain the amount which the said surety is bound to pay on account of said breach, and thereupon the said court shall render judgment therefor against the said surety and may award execution therefor.

IN WITNESS WHEREOF said The Quicksilver Mining Company, a corporation, has caused its name to be hereunto subscribed by its president and secretary thereunto duly authorized and said National Surety Company, a corporation, has caused its name to be hereunto affixed by its officers thereunto duly authorized, this 23d day of November, 1916.

THE QUICKSILVER MINING COMPANY.

By JOSEPH KAUFMANN,
President.

By CHARLES E. TRACY,
[Corporate Seal] Secretary.

NATIONAL SURETY COMPANY,

By WM. A. T. ROMPSON,
Resident Vice-President.

Attest: By E. M. McCARTHY,
Resident Assistant Secretary. [266]

[Corporate Seal]

State of New York,
County of New York,—ss.

On this 23d day of November, 1916, before me personally appeared Joseph Kaufmann to me known and known to me, who, being by me duly sworn, did

depose and say, that he resides in the city and county of New York; that he is the President of the Quicksilver Mining Company, the corporation described in and which executed the foregoing instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Board of Directors, of said corporation, and that he signed his name thereto by like order.

[Notarial Seal]

H. E. EMMETT,

Notary Public for Kings County No. 9.

Certificate filed in New York County No. 20. Nassau, Bronx No. 1. Queens No. 631, Richmond and Westchester Counties; Kings County Register's Office No. 9043; New York County Register's Office No. 2623; Bronx County Register's Office No. 524.

My commission expires March 30, 1918.

Capital \$3,000,000.

AFFIDAVIT, ACKNOWLEDGE, AND JUSTIFICATION BY GUARANTEE OR SURETY COMPANY.

State of New York,

County of New York,—ss.

On this 23d day of November, one thousand nine hundred and sixteen before me personally came Wm. A. Thompson, known to me to be the resident vice-president of the National Surety Company, the corporation described in and which executed the within and foregoing Bond of The Quicksilver Mining Company as a surety thereon, and who, being by me duly sworn, did depose and say that he

resides in the city of New York, State of New York; that he is the resident vice-president of said company, and knows the corporate seal thereof; that the said National Surety Company is duly and legally incorporated under the laws of the State of New York; that said company has complied with the provisions of the Act of Congress of August 13th, 1894; that the seal affixed to the within Bond of The Quicksilver Mining Company is the corporate seal of said National Surety Company, and was thereto affixed by the order and authority of the Board of Directors of said company; that he signed his name thereto by like order and authority as resident vice-president of said company; that he is acquainted with E. M. McCarthy and knows him to be the resident assistant secretary of said company; that the signature of said E. M. McCarthy subscribed to said *Bons* is in the genuine handwriting of said E. M. McCarthy and was thereto subscribed by order and authority of the Board of Directors; and in the presence of said deponent; that the assets of said company, unencumbered and liable to execution exceed its debts and liabilities of every nature whatsoever, by more than the sum of six million (\$6,000,000), dollars.

That — is the agent to acknowledge service for said company in the Judicial District wherein this bond is given.

WM. A. T. ROMPSON,
(Deponent's Signature.)

Sworn to, acknowledged before me, and subscribed in my presence this 23d day of November, 1916.

[Notarial Seal]

H. E. EMMETT,

(Officer's Signature, Description and Seal.)

Notary Public for Kings County No. 9.

Certificate filed in New York County No. 20; Nassau, Bronx No. 1; Queens No. 631; Richmond and Westchester Counties; Kings County Register's Office No. 9043; New York County Register's Office No. 2623; Bronx County Register's Office No. 524.

My commission expires March 30, 1918.

No. 28508—Series B.

State of New York,
County of New York,—ss.

I, William F. Schneider, Clerk of the county of New York, and also clerk of the Supreme Court for the said county, the same being a court of record, DO HEREBY CERTIFY, That H. E. Emmett, whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition or proof and acknowledgment, a notary public, acting in and for the said county, duly commissioned and sworn, and authorized by the laws of said State to take depositions and also acknowledgments and proofs of Deeds, or conveyances for land, tenements, or hereditaments in said State of New York. That there is on file in the clerk's office of the county of New York, a certified copy of his appointment and

qualification as notary public of the county of Kings with his autograph signature. And further, that I am well acquainted with the handwriting of such notary public, and verily believe that the signature to said deposition, or certificate of proof or acknowledgement is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said court and county this 24th day of November, 1916.

[Seal]

WM. F. SCHNEIDER,

Clerk. [267]

Approved this 5th day of December, 1916.

WM. C. VAN FLEET,

Judge.

[Endorsed] Filed Dec. 5, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [268]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 15,752.

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY, a
Corporation,

Defendant.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

I, Walter B. Maling, Clerk of the District Court

of the United States, in and for the Northern District of California, do hereby certify the foregoing two hundred sixty-eight (268) pages, numbered from 1 to 268 inclusive, to be a full, true and correct copy of the record and proceedings in the above and therein entitled cause, as the same remains of record and on file in the office of the clerk of said District Court, and that the same constitutes the return to the annxed writ of error.

I further certify that the cost of preparing and certifying the transcript of record on writ of error in this cause amounts to the sum of \$153.40; that said amount was paid by defendant; and that the original writ of error and citation issued in said cause are hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 26th day of February, A. D. 1917.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,
Deputy Clerk. [269]

*In the District Court of the United States, for the
Northern District of California, Second Division.*

No. 15,752.

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY, a
Corporation,

Defendant.

Writ of Error.

United States of America,—ss.

The President of the United States of America, to
the Honorable WM. C. VAN FLEET, Judge of
the District Court of the United States, for the
Northern District of California, GREETING:

Because, in the record and proceedings, as also in
the rendition of the judgment of a plea which is in
the said District Court before you, between C. P.
Anderson, plaintiff, and The Quicksilver Mining
Company, a corporation, defendant and plaintiff in
error, a manifest error hath happened to the great
damage of the said The Quicksilver Mining Com-
pany, a corporation, plaintiff in error, as by said
complaint appears, and we being willing that error,
if any hath been, should be duly corrected, and full
[270] and speedy justice done to the parties afore-
said in this behalf, do command you, if judgment be
therein given, that then under your seal, distinctly
and openly, you send the record and proceedings,

with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city and county of San Francisco, in the State of California, on the 31st day of December, A. D. 1916, in the Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS, the Honorable WM. C VAN FLEET, United States District Judge for the Northern District of California, this 5th day of December, in the year of our Lord one thousand nine hundred and sixteen.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, for the
Northern District of California, Second Division.

By J. A. Schaertzer,
Deputy Clerk. [271]

Received a copy of the within Writ of Error this
— day of November, A. D. 1916.

Attorney for Plaintiff and Defendant in Error.

[Endorsed]: No. 15,752. United States District Court, Northern District of California, Second Division. C. P. Anderson, Plaintiff, vs. The Quick-silver Mining Company, a Corporation, Defendant.

Writ of Error. Filed Dec. 8, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk.

Return to Writ of Error.

The answer of the Judges of the District Court of the United States, for the Northern District of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]

WALTER B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk. [272]

*In the District Court of the United States, for the
Northern District of California, Second Division.*

No. 15,752.

C. P. ANDERSON,

Plaintiff,

vs.

THE QUICKSILVER MINING COMPANY, a
Corporation,

Defendant.

Citation on Writ of Error.

United States of America,—ss.

The President of the United States to C. P. ANDERSON and to BERTRAM A. HERRINGTON, his Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a Writ of Error duly issued and now on file in the clerk's office of the United States District Court, for the Northern District of California, wherein C. P. Anderson is plaintiff, and The Quicksilver Mining Company, a corporation, is defendant, and to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the [273] said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WM. C. VAN FLEET, United States District Judge, for the Northern District of California, Second Division, this 6th day of December, A. D. 1916.

WM. C. VAN FLEET,

United States District Judge. [274]

[Endorsed]: No. 15,752. United States District Court, Northern District of California, Second Division. C. P. Anderson, Plaintiff, vs. The Quicksilver Mining Company (a Corporation), Defendant. Citation on Writ of Error. Filed Dec. 6,

1916. W. B. Maling, Clerk. By J. A. Schaertzer,
Deputy Clerk.

[Endorsed]: No. 2941. United States Circuit Court of Appeals for the Ninth Circuit. The Quicksilver Mining Company, a Corporation, Plaintiff in Error, vs. C. P. Anderson, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed February 26, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

No. 2941.

C. P. ANDERSON,
Plaintiff and Defendant in Error,
vs.

THE QUICKSILVER MINING COMPANY, a
Corporation,
Defendant and Plaintiff in Error.

**Stipulation Extending Time to File Record on or
Before February 26, 1917.**

WHEREAS, counsel for respective parties have agreed upon a settlement of the Bill of Exceptions herein; and

WHEREAS, Judge BLEDSOE, who tried the cause, has been in the State of New York on official business and has just returned; and

WHEREAS, he has settled and approved said Bill of Exceptions and has suggested an addition thereto; and

WHEREAS, said Bill of Exceptions has been finally completed in accordance with the suggestions of the Judge;

IT IS THEREFORE STIPULATED AND AGREED that the record herein shall be filed in this court on or before Monday, February 26, 1917, and time therefore is extended accordingly.

Dated: February 23, 1917.

A. H. JARMAN,

Attorney for Plaintiff and Defendant in Error.

B. A. HERRINGTON,

Attorney for Defendant and Plaintiff in Error.

[Endorsed]: Original. No. 2941. United States Circuit Court of Appeals, Ninth Circuit. C. P. Anderson, Plaintiff and Defendant in Error, vs. The Quicksilver Mining Company, a Corporation, Defendant and Plaintiff in Error. Stipulation Extending Time to File Record. Filed Feb. 26, 1917. F. D. Monckton, Clerk.

At a stated term, to wit, the October Term, A. D. 1916, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Monday, the twenty-sixth day of February, in the year our Lord one thousand, nine hundred and seventeen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable CHARLES E. WOLVERTON, District Judge.

No. 2941.

THE QUICKSILVER MINING COMPANY, a
Corporation,

Plaintiff in Error,

vs.

C. P. ANDERSON,

Defendant in Error.

**Order Extending Time to File Record on or Before
February 26, 1917.**

Upon motion of Mr. A. H. Jarman, counsel for the plaintiff in error, and agreeably to the stipulation of counsel for the respective parties, this day filed, and good cause therefor appearing, ORDERED, that the transcript of record in the above-entitled cause shall be filed in this court on or before February 26, 1917, and the time therefor is extended accordingly.